

COURT OF APPEALS CAUSE NO. 11-99-00001-CR

TRIAL COURT CAUSE NO. 11,154

STATE OF TEXAS ) ( IN THE DISTRICT COURT  
VS. ) ( PALO PINTO COUNTY, TEXAS  
RUSSELL DON JOHNSON ) ( 29TH JUDICIAL DISTRICT

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PUNISHMENT PHASE

SENTENCING OF THE DEFENDANT

VOLUME 5 OF 5

DECEMBER 15, 1998

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APPEARANCES:

ATTORNEY FOR STATE:

Mr. Jerry Ray, District Attorney  
Palo Pinto County  
P.O. Box 340  
Palo Pinto, Texas 76484  
SBOT No. 16604500

FILED  
IN COURT OF APPEALS  
ELEVENTH DISTRICT

FEB 16 1999

ATTORNEY FOR DEFENDANT:

Mr. Robert Watson  
Attorney at Law  
P.O. Box 1308  
Mineral Wells, Texas 76068  
SBOT No. 20961000

SHERIFF WILLIAMSON, CLERK  
By Stephens Deputy  
FEB 19 1999

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On the 15th day of December, 1998, the above-entitled and numbered cause came on to be heard for trial in the said Court, Honorable David Cleveland, Judge Presiding, and the following proceedings were held, to wit:

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## PROCEEDINGS

(Jury in at 9:12 a.m.)

THE COURT: Good morning, ladies and gentlemen. In the punishment phase of this trial, is the State ready to proceed?

MR. RAY: State's ready, Your Honor.

THE COURT: Is the defendant ready?

MR. WATSON: Yes, sir, we're ready, Judge.

THE COURT: Does the State want to make an opening statement?

MR. RAY: Yes, Your Honor. May it please  
the Court?

THE COURT: Yes.

MR. RAY: Mr. Watson. Good morning, ladies and gentlemen. I want to thank you for your verdict at the conclusion of the guilt/innocence phase of this trial. It was a verdict that was clearly justified by the quality and quantity of the evidence against the defendant.

That having been done, as we indicated during Voir Dire, we now move to the second phase of the trial which is called the punishment phase of the trial. And there the -- as I indicated to you Monday morning, we don't forget about the nature of the crime that you found Mr. Johnson guilty of, but the focus changes remembering that -- to a more focus on what should be done. And in

1 some sense this is probably the most important part of this  
2 trial.

3 And in focusing on disposition, I want to direct  
4 your attention and ask you to remember the oath that you  
5 took and the commitment that you made is that you would be  
6 the kind of people who would wait until you've heard all of  
7 the evidence and then decide in a proper case what the  
8 punishment should be and have the kind of courage to  
9 consider -- the willingness to consider the entire range of  
10 punishment and the courage to consider stiff punishment if  
11 the facts and circumstances warrant it.

12 Now, during this phase of the trial we are  
13 allowed, for the first time, to share with you additional  
14 information about the defendant, not just what he did to  
15 Mr. Pontremoli, an extremely dangerous situation there, but  
16 other things that focus on his reputation, his character,  
17 and other crimes, bad acts, wrong conduct committed by him  
18 that we can bring evidence forth. So I want to do that.  
19 And here's what we want to present to you so that you will  
20 know the rest of the story about Russell Don Johnson.

21 The story starts back in August, August the 17th  
22 of 1995 at Mineral Wells High School. Russell Don Johnson  
23 had had some problems with a fellow student named Raymond  
24 Vargas. And out at Mineral Wells High School right when  
25 school was starting, it was probably orientation week or

1 administration week, August the 17th, that outside of the  
2 auditorium out at the high school, Russell Don Johnson  
3 confronted Raymond Vargas. Raymond Vargas thought they  
4 were going to fight, and all of a sudden Russell Don  
5 Johnson produced a pair of scissors and stabbed Raymond  
6 Vargas twice in the arm. Darrell Carey, one of the  
7 teachers out there, and another lady named Marcie Carroll  
8 were witnesses to the incident and helped break it up and  
9 seized the scissors and see that Mr. Vargas got taken to be  
10 treated.

11           We can prove that to you in one of two ways; we  
12 may do a little of each. But what we're going to offer as  
13 evidence to prove that will be the fact that after  
14 Mr. Johnson was taken into custody, he was at that time --  
15 he was born in 1980, September of 1980, so he would have  
16 been almost 16 years of age -- no, let's see, he would have  
17 been right at 15 years of age. So when that happened, he  
18 was, of course, handled in our juvenile system. He was  
19 arrested and he was put into detention. And the juvenile  
20 system moves very rapidly.

21           The evidence is going to be presented through  
22 Mr. Jack Hunter, who is the juvenile probation officer for  
23 our county, that he was placed in detention over in Parker  
24 County, it's called the Parker County Emergency Youth  
25 Shelter. It's a facility that's approved to house

1 juveniles, can't mix them with adult prisoners except under  
2 certain circumstances.

3                 The evidence is going to show that there was a  
4 trial held downstairs 13 days later. The trial on the  
5 juvenile proceedings are called an adjudication hearing.  
6 It's the substitute of what we're going through now in  
7 adult court. And the adjudication hearing is called that  
8 because one is adjudicated to have engaged in delinquent  
9 conduct rather than found guilty of committing a crime.  
10 It's just the terminology that applies to juvenile  
11 proceedings.

12                 But even before then, in the 12 days that  
13 sandwiched between August 17th when he stabbed Raymond  
14 Vargas and to get him into the courtroom downstairs, there  
15 were, I believe, three assaultive incidents at the Parker  
16 County Emergency Youth Shelter where he would assault  
17 peers, other young people that are being detained there.

18                 And that the trial was held. We'll introduce a  
19 stipulation of evidence that's signed by Russell Johnson  
20 under oath wherein he admits to the stabbing of Raymond  
21 Vargas and committing what in adult court is called an  
22 aggravated assault on another human being. We'll introduce  
23 the judgment where he was adjudicated as having engaged in  
24 that conduct and the commitment that sent him away to  
25 what's called TYC, Texas Youth Commission. He was

1 sentenced to one year in TYC.

2 So Russell was gone for a year and then he comes  
3 back. And when he gets back to Mineral Wells, let's pick  
4 up the chronology this way. He gets back here sometime  
5 around the middle of September of 1996, approximately a  
6 year after his commitment to the youth facility, and that  
7 in the month of September, one week after he got back,  
8 Mineral Wells High School had a disciplinary procedure set  
9 up and he was -- because of violence and gang activity, was  
10 disciplined -- Mr. Sam Bell, who is one of the assistant  
11 principals out at the high school, will, in all likelihood,  
12 be here to testify this morning and will confirm for you  
13 under his job he keeps the disciplinary records of the  
14 district and that he was sent to what's called AEC, that's  
15 Alternative Education Campus. When people are not able to  
16 be in the regular population in our schools because of  
17 their conduct and interrupting the educational atmosphere,  
18 they're not kicked out, they're given a chance to continue  
19 their education in the AEC program. And so he was  
20 disciplined by being sent to AEC because of assaultive and  
21 gang activity.

22 Then that lasted for approximately 25 days, he  
23 made it in AEC, and then he was expelled from AEC on  
24 October the 18th of 1996 for a period that would not expire  
25 until May the 27th of 1997. In other words, about a

1 seven-month period of time there that would have been the  
2 end of the school term, end of May, he was expelled for the  
3 balance of that school year because of his conduct at AEC.  
4 Okay. That gets us to October 18th of 1996, he was  
5 expelled.

6 And then we're going to hear evidence that on  
7 November the 11th, that's going to be about 22 days that he  
8 made it this time, we're going to present evidence that at  
9 a street stop sign over by the junior high, he was walking  
10 across the street and a fellow that was in a car named  
11 Scott Cienega and they had words. Scott Cienega had just  
12 had his windows tinted and, therefore, couldn't roll down  
13 the window. And so he opened his door and stepped out of  
14 the car and Russell Don Johnson slammed the car door up  
15 against his legs, knocking him back. Scott Cienega got out  
16 of the car, and before that was over with, Russell Don  
17 Johnson had produced a screwdriver and stabbed Scott  
18 Cienega with the blow coming down towards his left chest  
19 area and Scott Cienega turning and the stab wound going  
20 into the upper rear part of the shoulder; stabbed Raymond  
21 Vargas with scissors and then went away and came back and  
22 on the 11th of November, stabbed Scott Cienega with a screw  
23 driver.

24 And then before that case could be brought to  
25 court, we're going to move forward, not far, 27 days this

1 time, to December the 5th of 1996. And on December 5th of  
2 1996, the evidence is going to show that Russell Don  
3 Johnson, one of his friends really, one of his running  
4 buddies, Robert Joe Perez, I think Russell had broken up  
5 with a girlfriend or something and Robert started dating  
6 her and Russell took offense at that and with no  
7 provocation whatsoever over at a friend's house, the  
8 evidence is going to show that Russell Don Johnson, on  
9 December the 5th of 1996, produced a knife and stabbed  
10 Robert Joe Perez in the back four times, one of the wounds  
11 missing his spine by about a quarter of an inch.

12 And the evidence is going to show that at that  
13 time Russell Don Johnson was still 16 years of age, and you  
14 don't get brought into adult court until you're 17 except  
15 under the certain circumstances.

16 The evidence is going to show after the Scott  
17 Cienega incident and the Robert Joe Perez stabbing incident  
18 that, at my request, proceedings were held downstairs in  
19 the juvenile court where Russell Don Johnson was certified  
20 by that court to be tried as an adult in the aggravated  
21 assault of Robert Joe Perez.

22 The evidence is going to show that soon  
23 thereafter a trial was held in this court where he was  
24 brought upstairs to be tried as an adult, given his age and  
25 the kind of activities that he'd been involved in, and that

1 we had a jury trial in this court; and that pursuant to a  
2 jury trial, the evidence is going to show that Russell Don  
3 Johnson was convicted by a jury just like you of stabbing  
4 Robert Joe Perez in the back.

5 The evidence is going to show, however, that  
6 during the punishment phase of that trial, because of  
7 testimony during the trial that Russell Don Johnson was  
8 hopped up on drugs and he really wouldn't have stabbed  
9 Robert Joe Perez had it not been for the drugs, that the  
10 jury decided that a 16-year-old, maybe let's don't send him  
11 to prison; even though all this violence, maybe let's don't  
12 send him to prison. So they gave him 10 years and probated  
13 it. They recommended probation to Judge Cleveland.

14 And the evidence is going to show 10 years is the  
15 most punishment that you can give someone if you're going  
16 to probate it. If you sentence them to more than 10 years,  
17 it cannot be probated. That jury struggled with the  
18 decision, but recommended probation. Because of the  
19 evidence heard during the trial, you're going to hear  
20 evidence that the Court made a finding based on that  
21 evidence that the criteria existed to find that there was a  
22 drug involvement that underlaid the stabbing incident. And  
23 so this Court addressed that and sent Russell Don Johnson  
24 to the most intensive, the longest and the strongest drug  
25 rehabilitation program that we have available in the court

1 systems in Texas. I don't know what you can buy with  
2 private money, but this is a nine-month to twelve-month  
3 program at prison. It's inside the prison walls, but it's  
4 in a unit that he is separated from the other convicts,  
5 substance abuse felony punishment facility. And this Court  
6 entered an order sending Russell Don Johnson as a condition  
7 of his probation to go to the Substance Abuse Felony  
8 Punishment Facility and deal with this matter.

9                 And so the evidence is going to show that Russell  
10 Don Johnson went to the SAFFP, Substance Abuse Felony  
11 Punishment, an anagram, sAFFP goes to SAFFP. The evidence  
12 is going to show that after he got out of SAFFP after  
13 spending those months gone and in kind of a lockup  
14 facility, that the program requires that you go to a  
15 halfway house, an aftercare facility, a transition facility  
16 to get out of the substance abuse prison facility, work  
17 your way back into society and hopefully be a good guy.

18                 And the evidence is going to show that Russell  
19 Don Johnson did not even successfully complete that  
20 program, that he messed up at the halfway house out in  
21 Midland and was discharged unsuccessfully, did not complete  
22 the program. The evidence is going to show that that  
23 happened on June the 14th of 1998 after being gone for  
24 approximately a year at SAFFP.

25                 The evidence is going to show that on June the

1       14th, he was discharged or kicked out of the facility and  
2       that he comes back here and, of course, he's on probation  
3       even though he got kicked out, and we haven't had time yet  
4       to file any motions to take away his probation or anything,  
5       but three days later, one of the probation officers  
6       downstairs that works for Mr. Ron Edwards, who is your  
7       chief of the adult probation officer in Palo Pinto County,  
8       requested a urine sample.

9                 And the evidence is going to show that Russell  
10      Don Johnson, after we spent a year working on this problem  
11      at the halfway house, within three days, turns up with a  
12      dirty urinalysis. And then I filed a motion to revoke his  
13      probation, to take away his probation because of repeated  
14      violations.

15               And then you know that before we can even get him  
16      arrested on the probation violation allegation, what  
17      happened 30 days later, approximately, when he attacks  
18      Mr. Pontremoli with this 36-inch pipe wrench and you heard  
19      Dr. Allensworth's testimony. And that brings us to now.

20               And then we've presented that evidence -- and  
21      it'll take us a couple of three hours to put on the  
22      evidence, perhaps. Some of it will be documentary  
23      evidence, some of it will be testimonial evidence, but you  
24      will have evidence on all of these things that I shared  
25      with you so that you will know who you are sentencing when

1 you next retire to consider your verdict.

2                 And we will -- if we prove these things to you,  
3 then we'll reserve our comments about what that might  
4 generate in terms of appropriate punishment to you for a  
5 violent person like this. You deserve to know about the  
6 person that you're sentencing. Thank you very much.

7                 THE COURT: Does the defendant want to make  
8 an opening statement?

9                 MR. WATSON: Not at this time, Your Honor.

10                 THE COURT: Who will you have sworn,  
11 gentlemen, who have not already been sworn?

12                 MR. RAY: John Arenz, Jack Hunter, Henry  
13 Williams, and Scott Cienega that have not already been  
14 sworn.

15                 THE COURT: Defendant have anyone?

16                 MR. WATSON: Yes, sir, he's getting her.

17                 (Pause in proceedings.)

18                 MR. WATSON: Your Honor, she is not on the  
19 floor, we can swear her later.

20                 (Witnesses sworn.)

21                 THE COURT: You'll have to remain outside  
22 the courtroom until called to testify. Don't discuss this  
23 case or your testimony with anyone or let anyone discuss it  
24 with you except for the attorneys. Who will you have  
25 first?

1 MR. RAY: Mr. Jack Hunter.

2 P.E. "JACK" HUNTER,

3 a witness called on behalf of the State, duly sworn to tell  
4 the truth, the whole truth, and nothing but the truth,  
5 testified on his oath as follows:

6

7 DIRECT EXAMINATION

8 BY MR. RAY:

9 Q Would you state your name, please?

10 A P.E. Hunter.

11 Q Mr. Hunter, how are you employed?

12 A I'm Chief Juvenile Probation Officer for the  
13 County of Palo Pinto.

14 Q How long have you been serving us in that  
15 capacity?

16 A A little over 20 years.

17 Q Mr. Hunter, are you familiar with an individual  
18 known as Russell Don Johnson?

19 A Yes, sir, I am.

20 Q Is Russell Don Johnson in the courtroom today?

21 A Yes, sir, he is.

22 Q Would you point him out and identify him for the  
23 record?

24 A (Pointing) He's the young man with the burr  
25 haircut seated to the immediate right of Mr. Watson at the

1 counsel table.

2 MR. RAY: Let the record reflect that the  
3 witness has identified the defendant, Russell Don Johnson.

4 BY MR. RAY:

5 Q Mr. Hunter, were you serving in the same capacity  
6 that you've indicated to the jury back on August the 17th  
7 of 1995 and continuously since that time?

8 A Yes, sir, I was.

9 Q Did you become familiar with an incident  
10 involving someone who was a juvenile named Russell Don  
11 Johnson on or about August the 17th of 1995?

12 A Yes, sir, I did.

13 Q And what is that called when your office gets a  
14 report?

15 A It's called a referral.

16 Q There is -- is it fair to say that there is kind  
17 of a unique dictionary or menu of terms that apply to  
18 juvenile proceedings that are different than adult  
19 proceedings?

20 A Yes, sir.

21 Q And instead of case reports, we have referrals;  
22 and instead of having a trial, we have adjudication  
23 hearings; and instead of being found guilty of a crime,  
24 you're found as having engaged in delinquent conduct, just  
25 for example, true?

1 A That's correct.

2 Q Okay. Is a finding by a court or jury in  
3 juvenile court that someone has engaged in delinquent  
4 conduct the same thing as a guilty verdict if compared to  
5 the adult court proceedings?

6 A Yes, sir.

7 Q The nature of the referral that you received  
8 about the defendant, Russell Don Johnson, on August 17th of  
9 '95, what was that?

10 A It was a delinquent conduct referral in which it  
11 would have been an aggravated assault causing serious  
12 bodily injury.

13 Q All right. Did that referral result in charges  
14 being brought, a petition being filed against the  
15 defendant?

16 A Yes, sir.

17 Q And what are the rules that apply to the  
18 detention of juveniles when they're charged with delinquent  
19 conduct? Can they be put in just any jail?

20 A No, sir.

21 Q What's the rule there?

22 A The general rule is that they have to be  
23 separated from adults; and under the federal mandate of the  
24 Deinstitutionalization Act passed several years ago, we now  
25 have to use what is referred to as a juvenile detention

1 facility or an emergency shelter for juveniles.

2 Q And are those facilities that have been approved  
3 as being in compliance with or a way to comply with that  
4 requirement?

5 A That's correct.

6 Q Do we have a juvenile detention facility in Palo  
7 Pinto County?

8 A No, sir.

9 Q What are the nearest ones that we utilize from  
10 time to time?

11 A We utilize Johnson County pretty regular, Johnson  
12 County Juvenile Detention Center. We utilize Parker County  
13 Youth Emergency Shelter. We've utilized Nolan County in  
14 Sweetwater, Denton County, and that's about the ones.

15 Q Was Mr. Johnson detained in a youth facility?

16 A Yes, sir, he was.

17 Q Which one?

18 A Parker County Youth Emergency Shelter in  
19 Weatherford.

20 Q And how many days went by before y'all could have  
21 the actual trial or adjudication hearing downstairs in the  
22 county court?

23 A From the 17th to August the 30th of '95.

24 Q All right. Some approximately 12 days would have  
25 sandwiched in between the date of the incident and the date

1 of the trial?

2 A That's correct.

3 Q During that time was the defendant detained in  
4 the Parker County Youth Shelter?

5 A Yes, sir, he was.

6 Q Prior to the time that you could get him to  
7 trial, did you receive any reports of assaultive conduct or  
8 violence at the Parker County Shelter?

9 A Yes, sir.

10 MR. WATSON: Your Honor, I'm going to object  
11 to that as hearsay.

12 THE COURT: I'll sustain the objection as to  
13 hearsay.

14 BY MR. RAY:

15 Q Well, Mr. Hunter, tell us the result of the  
16 adjudication trial or hearing that was held August 30th,  
17 1995.

18 A In the adjudication phase of the hearing,  
19 Mr. Johnson plead true to the charge that was filed on the  
20 petition and he was found true.

21 Q Okay. And finding true is the tantamount to  
22 finding guilty of the conduct?

23 A That's correct.

24 Q After -- similar to the process we're here in  
25 right now where we're having the punishment phase of this

1 trial, what is the punishment phase of a juvenile  
2 proceeding called?

3 A It's called a dispositional hearing.

4 Q And that's where the focus changes to what to do,  
5 right?

6 A That's correct.

7 Q What disposition. What disposition was made by  
8 the Court in the case of where Russell Don Johnson was  
9 charged with stabbing Robert Vargas?

10 A He was committed to the care, custody, and  
11 control of the Texas Youth Commission facility.

12 Q For how long?

13 A There is no set period of time, it can be up  
14 until age 21.

15 Q After he was committed or when he was  
16 committed -- did you make any particular recommendation to  
17 the Texas Youth Commission Administration with regard to  
18 what kind of facility would be appropriate for Mr. Johnson  
19 based on your investigation and familiarity with his  
20 background and the case?

21 A Yes, sir, I did.

22 (State's Exhibit No. 12 was marked  
23 for identification by the court  
24 reporter.)

25 BY MR. RAY:

1 Q Let me hand you what's been marked for  
2 identification as State's Exhibit 12 and ask if you can  
3 identify that?

4 A Yes, sir, I can.

5 Q What is State's 12?

6 A It's a letter to the staff of the Texas Youth  
7 Commission written by myself and signed by myself on August  
8 the 30th, 1995.

9 Q Does it pertain to the disposition of the case  
10 against Russell Don Johnson in juvenile court about which  
11 you've been testifying?

12 A Yes, sir, it does.

13 Q And in -- did you make -- write that letter and  
14 make the recommendation contained therein based upon your  
15 knowledge of the defendant --

16 MR. WATSON: Excuse me, Your Honor, I'm  
17 going to object. This letter contains information that is  
18 hearsay and I don't think is appropriate for the -- to be  
19 considered by the jury, and I'm going to object to this  
20 letter and any comments by Mr. Hunter on that letter.

21 THE COURT: Let me see it.

22 (Court reviews State's Exhibit No. 12.)

23 THE COURT: I'll sustain that objection at  
24 this point.

25 BY MR. RAY:

1 Q Mr. Hunter, without saying anything that somebody  
2 else told you, what recommendation did you make to the  
3 Texas Youth Commission?

4 A That he be placed in the Giddings State School  
5 Facility of TYC.

6 Q And why would someone -- why would you recommend  
7 that he be placed into the Giddings school, what is unique  
8 about the Giddings State School?

9 A The Giddings State School is what we commonly  
10 refer to as the maximum security unit for the TYC  
11 facilities.

12 (State's Exhibit Nos. 13, 14, 15, and  
13 16 were marked for identification by  
14 the court reporter.)

15 BY MR. RAY:

16 Q Mr. Hunter, are you familiar with the proceedings  
17 conducted in a case number, Cause No. 444 in the juvenile  
18 court or the County Court of Palo Pinto County sitting as a  
19 juvenile court?

20 A Yes, sir, I am.

21 Q Is that the case where the delinquent conduct,  
22 stabbing Raymond Vargas was heard?

23 A Yes, sir, it is.

24 Q Are you familiar with the court documents that  
25 were generated as part of the adjudication hearing and the

1 resulting judgment and commitment?

2 A Yes, sir, I do.

3 Q Let me hand you what have been marked as State's  
4 Exhibits 13, 14, 15, and 16 and ask you if you will look at  
5 those and see if you can identify them?

6 A Yes, sir, I can.

7 Q What is State's 13?

8 A State's Exhibit No. --

9 MR. WATSON: Your Honor, I see -- excuse me,  
10 these documents, as far as Mr. Hunter is concerned, would  
11 be hearsay. I don't think he can properly prove up these  
12 documents.

13 MR. RAY: Your Honor, if I might respond  
14 before you rule?

15 THE COURT: Yes.

16 MR. RAY: First of all, the -- prior to the  
17 time that I offer the -- there will be evidence that they  
18 are, in fact, certified copies, certified as being correct  
19 by Bobbie Smith, County Clerk of Palo Pinto County. And,  
20 secondly, prior to the time that they are offered, I will  
21 offer testimony through Mr. Hunter that they do pertain to  
22 the defendant in this case and, therefore, under rules 901  
23 and 902, they being certified copies of government  
24 documents, that they would be offered with that kind of  
25 foundation.

1                   THE COURT: Yes, I'll overrule that  
2 objection.

3 BY MR. RAY:

4                   Q     Mr. Hunter, again, what is State's Exhibit 13,  
5 sir?

6                   A     State's Exhibit 13 is entitled Stipulation of  
7 Evidence in Cause No. 444.

8                   Q     And that case is in the matter of whom?

9                   A     In the Matter of Russell Don Johnson.

10                  Q     And is that the same Russell Don Johnson that  
11 you've pointed out and identified as the defendant in our  
12 case?

13                  A     Yes, it is.

14                  Q     Is State's 13 certified by the county clerk of  
15 Palo Pinto County?

16                  A     Yes, it is.

17                  Q     And can it -- is it signed by the defendant,  
18 Russell Don Johnson?

19                   MR. WATSON: Your Honor, I have the same  
20 objection. Mr. Hunter cannot prove up these documents.  
21 He's not the custodian of these records, he cannot do this.  
22 We will object.

23                   THE COURT: All right. They're certified,  
24 I'll overrule that objection.

25 BY MR. RAY:

1 Q Is it signed by Russell Don Johnson?

2 A Yes, it is.

3 Q And is it signed under oath in the presence of  
4 Bobbie Smith, County Clerk of Palo Pinto County?

5 A That's correct.

6 Q And is it approved by Judge Harold Couch who was  
7 then sitting as the judge of that court?

8 A That's correct.

9 Q Move now to State's Exhibit 14. What is State's  
10 14?

11 A State Exhibit 14 is entitled Judgment, Cause No.  
12 444, In the Matter of Russell Don Johnson.

13 Q Is that the same Russell Don Johnson that's the  
14 defendant in our case?

15 A Yes, sir, it is.

16 Q Is State's Exhibit 14 certified by the county  
17 clerk of Palo Pinto County?

18 A Yes, sir, it is.

19 Q And when was that judgment entered?

20 A August the 30th of 1995.

21 Q And, again, does Russell Johnson's signature  
22 appear on that document as an attestation that he's  
23 received a copy of it?

24 A Yes, it does.

25 Q Move to State's Exhibit 15. What is State's 15?

1           A     State's Exhibit 15 is the Order of Commitment in  
2 Cause No. 444, In the Matter of Russell Don Johnson.

3           Q     And is that the same Russell Don Johnson that is  
4 the defendant in the case that's here on trial?

5           A     Yes, sir.

6           Q     And is State's Exhibit 15 certified by the county  
7 clerk of Palo Pinto County?

8           A     Yes, it is.

9           Q     And is it signed by Harold Couch, the then  
10 sitting judge of that court?

11          A     Yes, sir, it is.

12          Q     State's Exhibit 16, what is 16?

13          A     State's Exhibit 16, there's a three-page  
14 document, it is the Magistrate's Determination of  
15 Juvenile's Competency To Make a Confession. Page two is  
16 the warning to the juvenile offender, and Page 3 is the  
17 statement that Russell Don Johnson gave.

18          Q     And were those filed in Cause No. 444, In the  
19 Matter of Russell Don Johnson?

20          A     Yes, they were.

21          Q     Is that the same Russell Don Johnson that's the  
22 defendant in our case that's on trial?

23          A     Yes, it is.

24          Q     Is that the document certified by the county  
25 clerk of Palo Pinto County, Bobbie Smith?

1 A Yes, it is.

2 Q And does Russell Don Johnson's signature appear  
3 on the Warning To Juvenile By Magistrate given to him by  
4 Judge Byars?

5 A Yes, it does.

6 Q And does his signature appear at the bottom of  
7 the statement giving the statement under oath?

8 A Yes, it does.

9 MR. RAY: We offer State's 13, 14, 15, and  
10 16.

11 MR. WATSON: Your Honor, we'd object to 13,  
12 14, 15, and 16 for the reasons stated that this --  
13 Mr. Hunter cannot properly prove these up. The third page  
14 of No. 16 contains matters I would like for the Court to  
15 examine that relate to proper predicate for the third page  
16 being introduced into evidence. I would like the Court to  
17 look at that before any ruling is made.

18 THE COURT: All right.

19 MR. RAY: Your Honor, I'll withhold 16 for  
20 the time being, Your Honor, and have you rule on 13, 14,  
21 and 15.

22 THE COURT: All right. I'll overrule the  
23 objection on 13, 14, and 15, and they are admitted.

24 (State's Exhibit Nos. 13, 14 and 15  
25 were received into evidence.)

1 BY MR. RAY:

2 Q Mr. Hunter, looking there on the original  
3 documents that have been admitted into evidence, with  
4 reference to State's Exhibit 13, the Stipulation of  
5 Evidence, is it true that that document stipulates, the  
6 last paragraph, that on or about the 17th day of August,  
7 1995, the said child, that being Russell Don Johnson,  
8 violated a penal law of this state punishable by  
9 imprisonment, confinement in jail, to-wit, Article 22.02 of  
10 the Texas Penal Code in that he did then and there in the  
11 County of Palo Pinto and State of Texas intentionally,  
12 knowingly, and recklessly cause serious bodily injury to  
13 Raymond Vargas by then and there stabbing him with a pair  
14 of scissors on the wrist and upper left arm?

15 A Yes, sir.

16 Q And is that stipulated to in writing and signed  
17 by the defendant, Russell Don Johnson?

18 A Yes, it is.

19 Q Moving now to the State's Exhibit 14, the  
20 judgment, does that judgment adjudicate him as having  
21 committed that conduct?

22 A Yes, it does.

23 Q And then State's Exhibit 15, would that be the  
24 document, if the jury wanted to examine that evidence, that  
25 committed him to the Texas Youth Commission?

1 A That's correct.

2 Q Okay. Mr. Hunter, aside and apart -- you're  
3 aware that this jury has convicted Russell Don Johnson of  
4 aggravated robbery of an elderly gentlemen named Jimmie  
5 Pontremoli on July the 28th of 1998, are you not?

6 A Yes, I am.

7 Q For the moment I want to ask you to disregard  
8 that. Excluding that conduct that the jury has found him  
9 guilty of, forget about that, are you familiar with the  
10 reputation that Russell Don Johnson has earned in the  
11 community wherein he resides for being a peaceable and law  
12 abiding citizen?

13 A Yes, I am.

14 Q Is that reputation good or bad?

15 A Bad.

16 Q Mr. Hunter, later did you have an occasion to  
17 again come in contact with -- well, when did he get out of  
18 TYC, if he did?

19 A He was released from TYC in September of '96; and  
20 I believe it would have been along about the 13th or the  
21 14th of September, which would have been a Friday or  
22 Saturday, we had entered a contractual agreement with TYC  
23 to pick up supervision and he reported to the office of  
24 juvenile department on September the 16th.

25 Q So y'all would have picked up your supervision of

1 him again in mid September, about a year later, in 1996; is  
2 that correct?

3 A That's correct.

4 Q Did you have any occasion to receive any  
5 additional referral or referrals on Russell Don Johnson  
6 thereafter?

7 A Yes, I did.

8 Q Tell us about that.

9 A Received a referral on Russell Johnson in  
10 December of that same year for another aggravated --

11 MR. WATSON: Your Honor, excuse me, that  
12 would be based on hearsay information provided to Mr.  
13 Hunter. We're going to object to that.

14 THE COURT: Well, I'll overrule the  
15 objection if it's something he has personal knowledge of.

16 BY MR. RAY:

17 Q Well, did you receive a referral without regard  
18 to whether it was true or not?

19 A Yes, I did.

20 Q And when was that?

21 A It was in December.

22 Q Of '96?

23 A Yes, sir.

24 Q All right. And as a result of that, were any new  
25 charges filed against Mr. Johnson?

1                   MR. WATSON: Your Honor, excuse me, he's  
2 talking about personal knowledge of the incident or  
3 personal knowledge of the referral? The incident obviously  
4 he could not have personal knowledge of, so it would have  
5 to be what someone else told him in order for him to accept  
6 a referral.

7                   THE COURT: All right. Well, I don't know,  
8 I haven't heard. If it's something someone told him, he  
9 can't testify to it. But he can testify to the fact that  
10 there was a referral if he knows that of his own knowledge.

11 BY MR. RAY:

12 Q     Well, you are aware of a referral of your own  
13 personal knowledge?

14 A     Yes, sir, I am.

15 Q     Not what happened, I'm not saying you were a  
16 witness to the incident, but that you did receive a  
17 referral?

18 A     Yes, sir, I did.

19 Q     What did you do in response to it?

20 A     I proceeded to handle Russell Don Johnson as a  
21 juvenile offender again.

22 Q     And was another petition filed against him?

23 A     Yes, sir, another petition was filed.

24 Q     Charging him with what kind of conduct?

25 A     Delinquent conduct.

1 Q What kind of underlying offense?

2 A Aggravated assault, another aggravated assault  
3 offense.

4 Q Similar to the same kind of conduct he was  
5 charged with in the Raymond Vargas case?

6 A That's correct.

7 Q And was an adjudication hearing held in juvenile  
8 court pertaining to that allegation?

9 A No, sir, there wasn't.

10 Q What happened instead?

11 A After the filing of the petition through  
12 Mr. Garrett, we also filed what's called a waiver asking  
13 the court, the juvenile court, to waive its exclusive  
14 jurisdiction and try him as an adult.

15 Q And the result of those proceedings, if you  
16 would?

17 A They were -- a hearing was held in juvenile court  
18 in which a waiver was entered, and he was moved to adult  
19 court.

20 Q And the alleged victim in that case, if you  
21 recall?

22 A Robert Joe Perez.

23 MR. RAY: Pass the witness.

24 MR. WATSON: I have no questions of Mr.  
25 Hunter.

1                   THE COURT: That's all, thank you.

2                   MR. RAY: Call Darrell Carey. He'll need to  
3 be sworn.

4                   DARRELL CAREY,

5 a witness called on behalf of the State, duly sworn to tell  
6 the truth, the whole truth, and nothing but the truth,  
7 testified on his oath as follows:

8

9                   DIRECT EXAMINATION

10 BY MR. RAY:

11 Q       Would you state your name, please?

12 A       Curtis Darrell Carey.

13 Q       And Curtis would be regular spelling,  
14 C-u-r-t-i-s?

15 A       Yes.

16 Q       Spell Darrell.

17 A       D-a-r-r-e-l-l.

18 Q       And your last name?

19 A       C-a-r-e-y.

20 Q       Okay. Thank you, that always helps the court  
21 reporter when there's multiple spellings. Mr. Carey, how  
22 are you employed, sir?

23 A       I teach math at Mineral Wells High School.

24 Q       And how long have you been teaching out at  
25 Mineral Wells High School?

1 A For 24 years.

2 Q All right. And then may we assume that you were  
3 similarly engaged and employed on August the 17th of 1995?

4 A Yes, sir.

5 Q Would it be fair to assume that August 17th of  
6 1995 would be probably very early in the beginning of the  
7 fall term of school?

8 A Probably within the first week.

9 Q Did anything happen on August the 17th of 1995  
10 involving a student who got hurt named Raymond Vargas?

11 A Yes, sir.

12 Q Were you there when that incident unfolded?

13 A Yes, sir.

14 Q About what time of the day was it?

15 A Oh, 8:15, the bell had just rung.

16 Q And is the location where this occurred in Palo  
17 Pinto County, Texas?

18 A Yes, sir.

19 Q What were you doing at that time of morning?

20 A I had early morning duty and the bell had just  
21 rung and I was on my way to class.

22 Q Okay. What part of the school campus did your  
23 route take you to?

24 A We had duty in the cafeteria and were on our way  
25 back across what we call the breezeway, the front sidewalk,

1 toward D building where my classroom is.

2 Q What incident, if any, did you come upon? Would  
3 you describe that for us?

4 A Mrs. Carroll and I had had duty in the cafeteria,  
5 and we normally would walk the back sidewalk. She needed  
6 to go by the office, so we walked -- we headed for the  
7 front sidewalk and a student called to us and said there  
8 was a fight going on in front of the auditorium there. We  
9 went out that door and there were two young men in a fight,  
10 one of them, I thought was -- had a knife, it turned out to  
11 be a pair of scissors. And we tried to break the fight  
12 up. I kept hollering at the kids because that usually will  
13 separate them. One of them was very agitated and kept  
14 stabbing at the other one. We finally got them separated  
15 and I noticed blood on the shoulder on the one that was not  
16 armed. We got him away. Another fellow came out of the  
17 group of students that had been there and actually pushed  
18 the student with the scissors away. He threw those down  
19 and the two of them ran.

20 Q Okay. And who recovered the scissors?

21 A Mrs. Carroll.

22 Q Okay. And was the injured individual taken for  
23 treatment as far as you know?

24 A Yes. We got him away and that's when we observed  
25 the blood on his left shoulder and saw that he had been

stabbed and we started -- I started to the office with him and met the then principal, Mr. Pectol, and he took him.

Q And, Mr. Carey, just briefly, you have testified in this courtroom previously about the same incident back over a year ago; isn't that correct?

A Yes, sir.

Q And at that time you knew that this gentleman to my left, Russell Don Johnson, was -- you didn't know his name at the time of the stabbing, didn't you?

A No.

Q But you identified him as being the one with the scissors?

A Students identified him for us, we did not know either -- we didn't know any of the three.

Q        And when the efforts were made to separate Mr. Johnson from the stabbing victim, did he willingly stop or from what you saw did he keep jabbing and slashing?

A No, he did not stop until the third kid actually separated them.

MR. RAY: Pass the witness.

## CROSS - EXAMINATION

BY MR. WATSON:

Q Who was the other person involved in this fight, Mr. Carey?

1 A At the time I knew none of their names, sir.

2 Q Was there three people involved in the fight or  
3 two?

4 A No, there was two people involved in a fight and  
5 then the third one came out of the bystanders basically to  
6 help us separate them.

7 Q Do you know what started this fight?

8 A I have no idea, sir.

9 Q So as far as you know, the other party could have  
10 been the one that started the fight; is that correct?

11 A I have no idea, I just know that the two of them  
12 were fighting and the third one came out of the bystanders.

13 MR. WATSON: Okay. That's all the questions  
14 I have.

15 MR. RAY: Nothing further of this witness.

16 THE COURT: That's all. Thank you,  
17 Mr. Carey.

18 MR. RAY: Call Sam Bell. May this witness  
19 be excused?

20 THE COURT: Yes, sir, you may leave.

21 SAM BELL,  
22 a witness called on behalf of the State, duly sworn to tell  
23 the truth, the whole truth, and nothing but the truth,  
24 testified on his oath as follows:

25

1                           DIRECT EXAMINATION

2     BY MR. RAY:

3     Q     Would you state your name, please?

4     A     Sam Bell.

5     Q     And what kind of work do you do, Mr. Bell?

6     A     Assistant principal at Mineral Wells High School.

7     Q     And how long have you been serving in that  
8 capacity?

9     A     This is my third year.

10    Q     In that capacity as an assistant principal, what  
11    duties, if any, do you have with regard to the maintenance  
12    and keeping secure and track of records of students who are  
13    enrolled at Mineral Wells High School?

14    A     We have two types of records. We have discipline  
15    records which are kept for three years after that, and then  
16    we have a student's accumulative record which are kept  
17    forever. Okay. I'm in charge of the discipline, I have  
18    been for the last three years. I had some help this year,  
19    but my main priority has been discipline for the last three  
20    years.

21    Q     Are those discipline records maintained by the  
22    school under your direction in the ordinary course of  
23    business of the high school?

24    A     Yes.

25    Q     And are those records made by people who have

1 personal knowledge of the matters set forth therein?

2 A Yes.

3 Q And are they made, the written memoranda made at  
4 a time that is close in proximity to when the events occur?

5 A Yes.

6 Q And then you maintain and preserve and are the  
7 custodian of those records; is that correct?

8 A Yes.

9 Q At my request did you examine and locate the  
10 discipline records of Mineral Wells High School pertaining  
11 to Russell Don Johnson?

12 A Yes.

13 Q And can you -- directing your attention to  
14 September the 23rd of 1996, can you tell us what, if  
15 anything -- what disciplinary action was taken pertaining  
16 to Russell Don Johnson at that time?

17 A Okay. I'm going to refer to my notes here. I  
18 went back to -- several years back prior to that, I went  
19 back to junior high school.

20 MR. WATSON: Excuse me, Your Honor, I'm  
21 going to object to any -- that's nonresponsive. He asked  
22 him a question about September the 23rd, 1996.

23 THE COURT: Yes, sir.

24 BY MR. RAY:

25 Q Well, first, let's just -- we'll deal with that

1       in a minute maybe, but first in the fall of 1996, if you  
2       could address that for us.

3           A     Okay. In September of that year, he got in a  
4       fight with another student. Let me go back one year,  
5       September 3rd of that year, I met Russell Don Johnson --

6                    MR. WATSON: Excuse me, Your Honor. He's  
7       asked the question about September 23rd of 1996.

8                    MR. RAY: Well, I rephrased --

9                    MR. WATSON: Now he's wanting to go back to  
10      the other --

11                  MR. RAY: I rephrased it to the fall of  
12      1996, Your Honor.

13                  MR. WATSON: Well, the fall covers three or  
14      four months, I'd would like to know what he's talking  
15      about.

16                  THE COURT: All right. Sustained.

17      BY MR. RAY:

18           Q     All right. Mr. Bell, after -- when did school  
19      start, approximately, in 1996?

20           A     August of that year.

21           Q     Okay. Starting in August of that year and moving  
22      into September, tell us what the discipline records reflect  
23      about this man to my left, Russell Johnson.

24           A     Okay. I met with Russell and his mom upon their  
25      enrollment into Mineral Wells High School and just

1 discussed just student code of conduct, had to do with all  
2 students, went over the student handbook and things of that  
3 nature. And at that time I also had both of them, all  
4 three of us signed a contract just saying that he would  
5 abide by the school code and school conduct while he was on  
6 our campus.

7 Q Okay.

8 A On 9/3 I met with them, the contract was signed  
9 by all of us and on 9/11 he got in a fight with another  
10 student. He was placed in ISS at that time.

11 Q Now, what is ISS?

12 A In-school suspension.

13 Q Leaves him on the campus --

14 A Yes, sir.

15 Q -- but in a special environment?

16 A Yes, sir. Pulls him out of regular classroom,  
17 puts him in a more restrictive environment on our campus  
18 where he can be better supervised.

19 Q And that was because of a fight on September the  
20 11th?

21 A Yes, sir.

22 Q All right. Go ahead, what's next?

23 A Further questioning with Russell, he said he was  
24 in a gang. He said it wasn't school-related and therefore  
25 none of my business. He was referred to alternative school

1 for gang affiliation and gang activity.

2 Q Now, what is alternative education? Describe  
3 that for us.

4 A Alternative education is a stricter environment.  
5 It's a whole other campus off of our campus across town on  
6 the north side of campus. They lose some privileges and  
7 some rights at that time. It's very restrictive. They're  
8 supervised, highly supervised, and we place students over  
9 there for a variety of activities. And one of his -- or  
10 the reason he was placed was for gang activity. He said he  
11 was in a gang at that time.

12 Q All right. Now, that happened on what date that  
13 he was referred to AEC?

14 A AEC hearing was on September 23rd. We had the  
15 actual hearing on that date. He was placed in alternative  
16 school on September 25th for a time of 20 days. Twenty  
17 days is the minimum placement for students that go to  
18 alternative school, up to the remainder of the school year  
19 or calendar year. He was placed in a minimum stay. I  
20 don't determine the day of those placements, all I do is --

21 MR. WATSON: Your Honor, excuse me, I'm  
22 going to object to -- Mr. Bell is rambling, best I can  
23 tell, he's not answering questions, he's going over the  
24 chart.

25 THE COURT: Just answer the question.

1 BY MR. RAY:

2 Q What happened next, Mr. Bell, from the discipline  
3 records of Russell Don Johnson?

4 A He was placed in alternative school September  
5 25th for 20 days. He was expelled from --

6 MR. WATSON: Excuse me, Your Honor.

7 THE COURT: Okay. Just answer the  
8 question. Limit your answer to the questions.

9 THE WITNESS: Placed in alternative school  
10 September 25th.

11 BY MR. RAY:

12 Q All right. And after he was placed in  
13 alternative school, what happened next in regards to the  
14 discipline matters pertaining to Mr. Johnson?

15 A He was expelled from alternative school on  
16 October 18th through May 29th for persistent misconduct  
17 while in AEC; specifically, profanity, leaving school,  
18 arguing with another student, threatening another student.

19 Q All right. And that happened October the 18th of  
20 '96 and would have covered the balance of that academic  
21 school year, correct?

22 A Yes, sir.

23 Q Do your records show anything after that  
24 expulsion on October the 18th of 1996?

25 A No.

1 Q Okay. That was the last dealings y'all had with  
2 him as far as you know?

3 A Yes.

4 MR. RAY: Pass the witness.

5 MR. WATSON: No questions.

6 THE COURT: That's all. Thank you, Mr.  
7 Bell.

8 MR. RAY: May Mr. Bell be excused to go back  
9 to school, Your Honor?

10 THE COURT: Yes, sir, you may leave.

11 MR. RAY: Call Scott Cienega.

12 MR. RAY: Mr. Bell -- may I have Mr. Bell  
13 back just briefly for just one question?

14 THE COURT: Yes.

15

16 DIRECT EXAMINATION (cont.)

17 BY MR. RAY:

18 Q Mr. Bell, I may have forgotten to ask you this,  
19 I can't recall, I want to make sure. Do you know the  
20 person seated immediately to my left at the counsel table?

21 A Russell, I guess. It's been awhile since I've  
22 seen him.

23 Q But the person that you've been talking about on  
24 all of these records is Russell Don Johnson, the defendant  
25 in this case?

1 A Uh-huh, yes.

2 MR. RAY: Nothing further.

3 MR. WATSON: Your Honor, if I may,

4 Mr. Bell, apparently is under the Rule. I don't know if  
5 he's going to be --

6 THE COURT: All right. I excused him. If  
7 you don't need him to be back, he can stay.

8 SCOTT CIENEGA,

9 a witness called on behalf of the State, duly sworn to tell  
10 the truth, the whole truth, and nothing but the truth,  
11 testified on his oath as follows:

12

13 DIRECT EXAMINATION

14 BY MR. RAY:

15 Q Would you state your name, please?

16 A Scott Cienega.

17 Q Where do you live, Mr. Cienega?

18 A 1211 Southeast 4th Avenue, Mineral Wells.

19 Q And are you employed?

20 A Yes, sir.

21 Q Where do you work?

22 A At Whataburger.

23 Q And how long have you work worked at Whataburger?

24 A About four months.

25 Q Do you know -- now, do you know a fellow named

1 Russell Don Johnson?

2 A Yes, sir.

3 Q Is he in the courtroom today?

4 A Yes, sir.

5 Q Would you point at him and give a verbal  
6 description of some article of clothing that he's wearing  
7 so we'll know who you're pointing at?

8 A (Pointing) Long-sleeved white shirt.

9 MR. RAY: Let the record reflect that the  
10 witness has identified the defendant, Russell Don Johnson.

11 BY MR. RAY:

12 Q Mr. Cienega, prior to November the 11th of 1997,  
13 did you know Russell Don Johnson?

14 A No, sir.

15 Q Had you had anything to do with him at all?

16 A No, sir.

17 Q Did anything happen on November the 11th of 1996  
18 that was extraordinary or unusual?

19 A Yes.

20 Q What happened to you?

21 A Russell tried to stab me.

22 Q Did he, in fact, stab you?

23 A Not exactly, no.

24 Q Well, tell us what happened to you.

25 A Well, I pulled up to a four-way stop and I seen

1 him coming off the curb and I proceeded to the stop  
2 sign. And he come out, you know, almost walking into my  
3 car, you know, and then, you know, came fairly close. And  
4 he, you know, threw his hands up. So, you know, I got out  
5 of the car. And I said --

6 Q Why didn't you roll your windows down?

7 A My windows had just been tinted, you know, I  
8 couldn't roll them down so, you know, I just opened the  
9 door, just stepped out, you know, took one step out and  
10 stood up.

11 Q What happened next?

12 A I asked him, you know, I said, what's your  
13 problem, you know. So he says, he says, you're my problem.  
14 You know, I said, well, I said, you better watch out, you  
15 know, walking out in the street like that; you're going to  
16 get hurt, you know. So he says, no, you're the one that's  
17 fixing to get hurt. So he pulls his fist back like he's  
18 fixing to hit me. And I said, don't hit me, you know, I'm  
19 on probation, I said, you know, I don't want any trouble.  
20 So he pushed my door into my legs and I fell back in the  
21 seat. And I got -- stood back up and when I did, he come  
22 at me with a screwdriver.

23 Q Okay. What happened with the screwdriver?

24 A He come down with it like he was fixing to stab  
25 me in the chest, so I turned and, you know, it stuck me in

1 my shoulder.

2 Q Okay. What happened after he stuck you in the  
3 shoulder with the screwdriver?

4 A I started running back towards, he just kept  
5 coming, you know, about four or five times. You know, I  
6 ran around the car trying to get away. And I made it back  
7 to my car and I had a crowbar and I pulled it out and he  
8 ran away.

9 Q Have you had any dealings with him since?

10 A No, sir.

11 Q You testified previously in court when he was on  
12 trial before?

13 A Yes, sir.

14 Q That's the only dealings you ever had with him?

15 A Right.

16 MR. RAY: Pass the witness.

17

18 CROSS-EXAMINATION

19 BY MR. WATSON:

20 Q You said you were not exactly stabbed, what did  
21 you mean by that?

22 A He just stuck me in the shoulder, you know; it  
23 didn't penetrate the skin.

24 Q And you're on probation?

25 A Yes, sir.

1 Q For what?  
2 A For possession of a weapon on a school campus.  
3 Q Okay. And how old are you?  
4 A I'm 22.  
5 Q What weapon did you have?  
6 A It was a .25 automatic.  
7 Q High school?  
8 A Yes, sir.  
9 Q And when did that happen?  
10 A Five years ago.  
11 Q And you're on probation for how long?  
12 A Six years.

13 MR. WATSON: Okay. That's all the questions  
14 I have.

15  
16 REDIRECT EXAMINATION

17 BY MR. RAY:

18 Q Have you had any referrals or problems since you  
19 got put on probation five years ago?

20 A No, sir.

21 Q You're almost finished with your probation?

22 A Yes, sir.

23 Q And if you finish it out, will you even receive a  
24 conviction?

25 A No, sir.

1 Q Okay. Any problems with the law at all since  
2 then?

3 A No.

4 Q You didn't do anything to Russell Don Johnson on  
5 November 11th to provoke that?

6 A No, sir.

7 MR. RAY: That's all I have.

8 THE COURT: Anymore questions?

9 MR. WATSON: No, I have no questions.

10 THE COURT: That's all, you may step down.

11 THE WITNESS: Okay.

12 MR. RAY: May he be released, Your Honor?

13 THE COURT: Yes, you may leave.

14 MR. RAY: Call John Arenz.

15 JOHN JOSEPH ARENZ,  
16 a witness called on behalf of the State, duly sworn to tell  
17 the truth, the whole truth, and nothing but the truth,  
18 testified on his oath as follows:

19

20 DIRECT EXAMINATION

21 BY MR. RAY:

22 Q Would you state your name, please?

23 A My name is John Joseph Arenz.

24 Q And would you spell your last name?

25 A A-r-e-n-z.

1 Q And how are you employed, Mr. Arenz?

2 A I'm a police officer for the City of Colleyville.

3 Q How long have you been working for Colleyville?

4 A One year.

5 Q And where did you work prior to that?

6 A I was a police officer for the City of Mineral  
7 Wells for 10 years.

8 Q And is it true that part of your tenure with  
9 Mineral Wells Police Department you served in the capacity  
10 as one of their detectives?

11 A Yes, it was.

12 Q Do you know an individual named Russell Don  
13 Johnson?

14 A Yes, I do.

15 Q Is he in court today?

16 A Yes, he is.

17 Q Would you point him out and identify him, please?

18 A He is at the defense table wearing a white shirt.

19 MR. RAY: Let the record reflect that the  
20 witness has identified the defendant, Russell Don Johnson.

21 BY MR. RAY:

22 Q Officer Arenz, are you aware that we are here in  
23 the punishment phase of the trial where Russell Don Johnson  
24 has been convicted by this jury of the offense of  
25 aggravated robbery that occurred in July of this year?

1 A Yes, I am.

2 Q For the moment I want you to put that fact out of  
3 your head, in other words, exclude that conduct. Prior to  
4 that and not including that, are you familiar with the  
5 reputation earned by Russell Don Johnson in the community  
6 where he resides for being a peaceable and law-abiding  
7 citizen?

8 A Yes, I am.

9 Q Is that reputation good or bad?

10 A It is bad.

11 Q Detective Arenz, did you participate in your  
12 capacity as a detective with -- well, were you a detective  
13 back in August of 1995?

14 A Yes, I was.

15 Q And did you participate in the investigation of a  
16 stabbing out at the high school involving Mr. Johnson  
17 stabbing a fellow named Raymond Vargas?

18 A Yes, I did.

19 Q Did you take a statement from Russell Don Johnson  
20 under the juvenile rules and provisions?

21 A Yes, I did.

22 BY MR. RAY:

23 Q Let me hand you what's been marked for  
24 identification as State's Exhibit No. 16 and ask you if you  
25 will examine that three-page document and see if you can

1 identify it?

2 A Yes, sir, this is the statement I took from Mr.  
3 Johnson. Attached to it is the proper juvenile warnings  
4 administered by the judge.

5 Q Was that statement taken pursuant to the rules of  
6 the juvenile code about how you can take a statement from a  
7 juvenile in custody?

8 A Yes, it was.

9 Q And was he given his magistrate's warning as  
10 required by this statute?

11 MR. WATSON: Your Honor, I'm going to object  
12 to these three documents. These documents are hearsay as  
13 to Mr. Arenz. He cannot prove up these documents, Your  
14 Honor, we're going to object to it. Apparently the person  
15 that took the statement is not even Mr. Arenz.

16 MR. RAY: It's not true, Your Honor.

17 THE COURT: I think, gentlemen -- I think we  
18 need a Jackson-Denno hearing before a statement is admitted  
19 even though it's a part of the record. I'll sustain that  
20 objection.

21 BY MR. RAY:

22 Q Okay. Detective Arenz, after the Vargas trial  
23 where Mr. Vargas got stabbed by Mr. Russell Don Johnson was  
24 over with, did you participate in another investigation  
25 wherein he was charged with a crime?

1 A Yes, I did.

2 Q And what did that involve?

3 A I investigated two more stabbings he was involved  
4 in; one was the stabbing of Mr. Cienega and one was the  
5 stabbing of Robert Perez.

6 Q And about when did the Robert Joe Perez stabbing  
7 incident occur?

8 A I believe it was December of 1996.

9 Q All right. When that case unfolded, was  
10 Mr. Johnson taken into custody?

11 A He was taken into custody after stabbing  
12 Mr. Perez, yes, sir.

13 Q And at that time he was still a juvenile?

14 A Yes, he was, sir.

15 Q While he was at the station and not being  
16 questioned by the police officer, did he ask anything about  
17 the stabbing victim, Robert Joe Perez?

18 A Yes, he did.

19 Q And what did he ask?

20 A He asked what Mr. Perez's condition was.

21 Q And was he advised what Mr. Perez's condition was  
22 at the time?

23 A Yes, he was.

24 Q And what did that include?

25 A He was advised that Mr. Perez was in critical

1 condition at the hospital. If one of the stab wounds had  
2 been a quarter of an inch to the right, it would have  
3 severed Mr. Perez's spine.

4 Q And in response to that, did Russell Don Johnson  
5 express any remorse?

6 A No, he did not.

7 Q Instead what did he say?

8 A He made a statement that if he had not been  
9 knocked off of him by another individual, he would have  
10 stabbed him a fifth time right in the middle of the back.

11 Q And did he refer to his victim by any profane  
12 label?

13 A Yes, he did.

14 Q And would you give us the initials of what he  
15 referred to his victim as?

16 A MF.

17 Q Okay. So instead of expressing remorse, he says  
18 he wished he could have got him a fifth time in the middle  
19 of the back?

20 A Yes. He said if he had not been knocked off by  
21 Mr. Reyes, he would have stabbed him a fifth time in the  
22 middle of the back.

23 Q Did you -- which detention facility was the  
24 defendant, Russell Johnson, held in or transferred to?

25 A Patrolman Lawrence Henry and I then transported

1 him to Johnson County Juvenile Detention Facility in  
2 Cleburne.

3 Q And on that ride to the detention center, again,  
4 not pursuant to any question that any police officer would  
5 have asked him, did he make any comments to you about his  
6 interests, what he was concerned about?

7 A Yes, he did. He -- I had seized his gang rag,  
8 it's a handkerchief that gang members use to identify  
9 themselves, and he expressed great interest in getting back  
10 his gang rag. He also at one point mentioned how the  
11 Mineral Wells gangs wanted to go to Los Angeles and become  
12 a gang member there because the Mineral Wells gang were not  
13 real enough for him.

14 MR. RAY: Pass the witness.

15 MR. WATSON: No questions.

16 THE COURT: That's all. Thank you,  
17 Mr. Arenz.

18 MR. RAY: Call Henry Williams.

19 THE COURT: Were you sworn earlier?

20 MR. WILLIAMS: Yes, sir.

21 THE COURT: All right. Just have a seat.

22 HENRY WILLIAMS,  
23 a witness called on behalf of the State, duly sworn to tell  
24 the truth, the whole truth, and nothing but the truth,  
25 testified on his oath as follows:

1                           DIRECT EXAMINATION

2         BY MR. RAY:

3         Q     Good morning. Would you state your name,  
4     please?

5         A     Henry Earl Williams.

6         Q     And where do you live, Mr. Williams?

7         A     In Fort Worth.

8         Q     Okay. And how are you employed?

9         A     I'm with Parker County Emergency Youth Shelter.

10        Q     And what's your job duty or description there at  
11     the youth shelter?

12        A     To make sure that the kids are safe and not  
13     causing harm to other kids, not escaping, and following the  
14     program.

15        Q     Okay. There's been some testimony that back in  
16     the latter two weeks of August of 1995, a man named Russell  
17     Don Johnson, or a juvenile at that time, was committed to  
18     or detained in the Parker County Youth Emergency Shelter.  
19     Were you working there at that time?

20        A     Yes, sir.

21        Q     Do you remember Russell Don Johnson?

22        A     Yes, sir.

23        Q     Is he in the courtroom today?

24        A     Yes, sir.

25        Q     Would you point him out and identify him for the

1 record?

2 A (Pointing) Right there.

3 Q Okay. Would you give a description of some  
4 article of clothing that he's wearing so the court reporter  
5 can take down who you're pointing at?

6 A Um, cream-colored flannel shirt -- I mean, not  
7 flannel, but thermal.

8 MR. RAY: Let the record reflect that the  
9 witness has identified the defendant, Russell Don Johnson.

10 BY MR. RAY:

11 Q Mr. Williams, during the time that Russell Don  
12 Johnson was detained at the Parker County Youth Facility  
13 and you were working there, did y'all have any problems  
14 with him that involved violence or assaultive conduct?

15 A Yes, sir.

16 Q Can you describe that for us?

17 A Well, the incident that I was involved in, it  
18 happened in the cafeteria. He hit a kid with a chair two  
19 times in the head.

20 Q After that incident occurred, did you have any  
21 direct interaction with the defendant, Russell Johnson?

22 A Well, I walked him down to the timeout room.

23 Q And what happened in the time-out room?

24 A Well, when I got in the time-out room, he was  
25 still upset and he stated that the kid stole some of his

1 clothes or something. And I told him he should have -- you  
2 know, he should have came to one of us first before he took  
3 the actions that he took. And then he got mad and came at  
4 me and I restrained him.

5 Q So he was aggressive toward you --

6 A Yes, sir.

7 Q -- in the time-out room?

8 MR. RAY: Pass the witness.

9 MR. WATSON: No questions.

10 THE COURT: That's all. Thank you,

11 Mr. Williams.

12 THE WITNESS: Thank you.

13 MR. RAY: May this witness be excused?

14 THE COURT: Yes, sir, you may leave.

15 THE WITNESS: Thank you.

16 MR. RAY: Call Kirby Wiggington.

17 THE COURT: Will this witness be very long?

18 MR. RAY: No, sir.

19 THE COURT: We'll recess after this  
20 witness.

21 KIRBY WIGGINGTON,  
22 a witness called on behalf of the State, duly sworn to tell  
23 the truth, the whole truth, and nothing but the truth,  
24 testified on his oath as follows:

1                           DIRECT EXAMINATION

2       BY MR. RAY:

3       Q     Would you state your name, please?

4       A     Kirby Wiggington.

5       Q     Are you the same Kirby Wiggington who testified  
6     yesterday in these same proceedings?

7       A     Yes, sir.

8       Q     You understand you're still under oath?

9       A     Yes, sir.

10      Q     And, again, you indicated to the jury you serve  
11     as a detective with the criminal investigations division of  
12     the City of Mineral Wells Police Department; is that  
13     correct?

14      A     Yes, sir.

15      Q     You understand, Detective Wigginton, that the  
16     jury last evening convicted Russell Don Johnson of the  
17     offense of aggravated robbery, are you not?

18      A     Yes, sir.

19      Q     And you've indicated you participated in that  
20     investigation. For the moment I want you to set that  
21     aside. Not including the aggravated robbery of  
22     Mr. Pontremoli on July 28th, were you, prior to that time,  
23     familiar with the reputation earned by the defendant,  
24     Russell Don Johnson, in the community in which he resides  
25     for being a peaceable and law-abiding citizen?

1 A Yes, sir.

2 Q And is that reputation good or bad?

3 A It's bad.

4 MR. RAY: Pass the witness.

5 MR. WATSON: No questions.

6 THE COURT: That's all, thank you. All  
7 right. We're about halfway through the morning, let's take  
8 about 10 minutes, ladies and gentlemen.

9 (Jury out at 10:22 a.m.)

10 (Jury in at 10:39 a.m.)

11 MR. RAY: Call Matt Windham.

12 MATT WINDHAM,

13 a witness called on behalf of the State, duly sworn to tell  
14 the truth, the whole truth, and nothing but the truth,  
15 testified on his oath as follows:

16

17 DIRECT EXAMINATION

18 BY MR. RAY:

19 Q Would you state your name, please?

20 A Matt Windham.

21 Q How are you employed, Mr. Windham?

22 A City of Mineral Wells police officer.

23 Q And how long have you been a police officer with  
24 the city of Mineral Wells?

25 A One year.

1 Q And were you a reserve officer prior to that  
2 time?

3 A Yes, sir.

4 Q Are you a certified peace officer?

5 A Yes, sir.

6 Q Do you know Russell Don Johnson?

7 A Yes, sir.

8 Q Is he in the courtroom today?

9 A Yes, sir.

10 Q Would you point at him and give some verbal  
11 description of an article of clothing that he's wearing so  
12 that the court reporter can take down your identification?

13 A Yes, sir. (Pointing) Subject right there  
14 wearing a long-sleeved beige -- or shirt.

15 MR. RAY: Let the record reflect that the  
16 witness has identified the defendant, Russell Don Johnson.

17 BY MR. RAY:

18 Q Officer Windham, you're aware that the defendant  
19 has -- was convicted late yesterday by this jury of  
20 aggravated robbery of a man named Mr. Pontremoli on July  
21 28th of 1998, are you not?

22 A Yes, sir.

23 Q Excluding that conduct, forget about that, prior  
24 to that that time, were you familiar with his reputation in  
25 the community in which he resides for being a peaceable and

1 law-abiding citizen?

2 A Yes, sir.

3 Q Is that reputation good or bad?

4 A Bad.

5 MR. RAY: Pass the witness.

6 MR. WATSON: No questions.

7 THE COURT: That's all, thank you.

8 MR. RAY: Call Detective Mike McAllester.

9 MIKE MCALLESTER,

10 a witness called on behalf of the State, duly sworn to tell  
11 the truth, the whole truth, and nothing but the truth,  
12 testified on his oath as follows:

13

14 DIRECT EXAMINATION

15 BY MR. RAY:

16 Q Would you state your name, sir?

17 A Mike McAllester.

18 Q Are you employed?

19 A I'm a detective with the a police department in  
20 Mineral Wells.

21 Q Are you the same Mike McAllester that testified  
22 yesterday in these proceedings?

23 A Yes, sir, I am.

24 Q Do you understand you're still under oath?

25 A Yes, sir, I do.

1 Q You've indicated before the jury in previous  
2 testimony that you are familiar with Russell Don Johnson,  
3 the defendant in this case, and you pointed out and  
4 identified him for the record, did you not?

5 A Yes, sir.

6 Q You are aware that the jury convicted Mr. Johnson  
7 of aggravated robbery yesterday, are you not?

8 A Yes, sir.

9 Q Exclusive of that conduct that's the subject of  
10 this trial, were you, prior to that time, familiar with his  
11 reputation in the community in which he resides for being a  
12 peaceable and law-abiding citizen?

13 A Yes, sir.

14 Q Was that reputation a good or a bad one?

15 A Bad one.

16 MR. RAY: Pass the witness.

17

18 CROSS-EXAMINATION

19 BY MR. WATSON:

20 Q Mr. McAllester, do your records reflect that  
21 except for this robbery case that Mr. Johnson was convicted  
22 of yesterday, that these matters took place while he was a  
23 juvenile?

24 A Yes, sir.

25 Q Do you know his date of birth?

1 A Sir?

2 Q Do you know his date of birth?

3 A Not offhand.

4 Q If it's September 29th, 1980, he would be what,  
5 18 as of a couple of months ago?

6 A Yes, sir.

7 Q Had he been 16 at the time this one happened, he  
8 would have been handled as a juvenile?

9 A That's possible, yes, sir.

10 Q That's what I mean, it starts in juvenile court?

11 A Yes, sir.

12 Q And the range of punishment for aggravated  
13 robbery is five to ninety-nine or life; is that right?

14 A Yes, sir, it is.

15 Q And up to a \$10,000 fine?

16 A Yes, sir.

17 Q And it's the same punishment for murder, isn't  
18 it?

19 A Yes, sir.

20 Q There's no difference?

21 A Yes, sir.

22 MR. WATSON: Okay. That's all the questions  
23 I have.

24

25

1                   REDIRECT EXAMINATION

2       BY MR. RAY:

3       Q     It's the same punishment for breaking into  
4     somebody's home under certain circumstances, too, isn't it?

5       A     Yes, sir, it is.

6       Q     Same punishment for sexual assault, aggravated  
7     sexual assault, too, isn't it?

8       A     Yes, sir, it is.

9       Q     Serious felony then, fair enough?

10      A     Yes, sir.

11      Q     Mr. McAllester, given what you know about the  
12     defendant, Russell Don Johnson, and the incidents that  
13     you're familiar with that help form his reputation about  
14     which you've testified, when he was 16 years old or 17  
15     years old for that matter, do you have an opinion of  
16     whether or not he -- well, when he was 16 years old, if he  
17     engaged in an act of violence, could he hurt somebody just  
18     as badly as a 40-year-old man?

19      A     Yes, sir.

20      Q     And has?

21      A     Yes, sir, he has.

22                   MR. RAY: No further questions.

23                   MR. WATSON: I have no further questions.

24                   THE COURT: That's all, thank you.

25                   MR. RAY: Call Ron Edwards.

1 RONALD EDWARDS,  
2 a witness called on behalf of the State, duly sworn to tell  
3 the truth, the whole truth, and nothing but the truth,  
4 testified on his oath as follows:

5

6 DIRECT EXAMINATION

7 BY MR. RAY:

8 Q Would you state your name, please, sir?

9 A Ronald Edwards.

10 Q How are you employed, sir?

11 A I'm the director of the Community Supervision and  
12 Correction Department for the 29th District Court, Palo  
13 Pinto County.

14 Q How long have you worked for this county in that  
15 capacity?

16 A Since March 1st, 1975.

17 Q Mr. Edwards, in your capacity as the director of  
18 the Community Supervision and Correction Department -- oh,  
19 by the way, is that the new legal code language for what we  
20 all used to refer to as the probation, Adult Probation  
21 Department?

22 A Yes, it is.

23 Q Okay. Are you familiar with an individual known  
24 as Russell Don Johnson?

25 A Yes, I am.

1 Q Is he in court today?

2 A Yes, he is.

3 Q Would you point him out and identify him for the  
4 record?

5 A He's seated at the counsel table to his  
6 attorney's right.

7 MR. RAY: Let the record reflect that the  
8 witness has identified the defendant, Russell Don Johnson.

9 BY MR. RAY:

10 Q Mr. Edwards, are you aware that the jury in the  
11 case has convicted him of the first degree felony of  
12 aggravated robbery?

13 A Yes.

14 Q Set that aside for the moment, forget about  
15 that. Excluding that conduct and that conviction, prior to  
16 that time were you familiar with his reputation in the  
17 community in which he resides for being a peaceable and  
18 law-abiding citizen?

19 A Yes.

20 Q Was that reputation good or bad?

21 A Bad.

22 Q Mr. Edwards, were you serving in the capacity  
23 that you've indicated at all times relevant to proceedings  
24 held in this court, the 29th Judicial District Court of  
25 Palo Pinto County, Texas, in Cause No. 10,690, styled the

1 State of Texas versus Russell Don Johnson?

2 A Yes.

3 Q Are you familiar with a judgment on jury verdict  
4 of guilt entered in that cause April 15th of 1997?

5 A Yes.

6 Q Are you also familiar -- well, were you in court  
7 when he was adjudicated guilty or found guilty by the jury  
8 in that case?

9 A Yes, I was.

10 Q And what offense was he convicted of?

11 A Aggravated assault.

12 Q And did that include an affirmative finding that  
13 a deadly weapon was used in the commission of that  
14 aggravated assault?

15 A Yes, it did.

16 Q And did that involve the stabbing of Robert Joe  
17 Perez in the back four times with a knife?

18 A Correct.

19 (State's Exhibit No. 17 was marked  
20 for identification by the court  
21 reporter.)

22 BY MR. RAY:

23 Q Mr. Edwards, let me hand you what's been marked  
24 for identification by the court reporter as State's Exhibit  
25 No. 17 and ask you if you can identify that exhibit?

1 A Yes, I can.

2 Q What is State's 17?

3 A It's a judgment on jury verdict of guilty and  
4 punishment fixed by the court and probation granted in  
5 Cause No. 10,690, the State of Texas versus Russell Don  
6 Johnson.

7 Q And is the Russell Don Johnson who is the subject  
8 of State's Exhibit 17, that judgment of guilt, one and the  
9 same person as the Russell Don Johnson that you've  
10 identified as being known to you and being present in court  
11 today?

12 A He is one and the same person.

13 Q Mr. Edwards, is State's Exhibit 17 a certified  
14 copy of the original of that document?

15 A Yes, it is.

16 Q And is it certified to by Mrs. Helen Slemmons  
17 known to you to be the district clerk of this jurisdiction?

18 A Yes, it is.

19 MR. RAY: We offer State's 17, Your Honor.

20 MR. WATSON: Now, was the question he  
21 identified this as a judgment?

22 MR. RAY: A certified copy of the original  
23 judgment entered in that cause.

24 MR. WATSON: Right. Well, there's more than  
25 that here is the reason I ask.

1                   MR. RAY: Well, there's orders that are part  
2 of the judgment.

3                   MR. WATSON: I don't have any objection.

4                   THE COURT: It's admitted.

5                   (State's Exhibit No. 17 was  
6 received into evidence.)

7 BY MR. RAY:

8                   Q     Mr. Edwards, is it true that the jury, as  
9 reflected by State's Exhibit 17, not only found the  
10 defendant, Russell Don Johnson, guilty of aggravated  
11 assault with an affirmative finding as to the use of a  
12 deadly weapon, but they also assessed his punishment at  
13 10 years in prison?

14                  A     Correct.

15                  Q     And did they suspend the confinement in prison  
16 part of that judgment and recommend to the Court that he be  
17 placed on probation or community supervision?

18                  A     That is correct.

19                  Q     Mr. Edwards, during the course of that trial, to  
20 your knowledge was testimony offered before this Court that  
21 the reason Russell committed the offense of stabbing Robert  
22 Joe Perez in the back was that he was on drugs at the time?

23                  A     That is correct.

24                  Q     And based upon that testimony and that offer of  
25 evidence by the defendant, did Judge Cleveland make any

1 specific findings of criteria that are relevant to that  
2 kind of subject matter?

3 A Yes, he did.

4 Q Examining State's Exhibit 17, what is in that  
5 exhibit that would reflect what kind of finding or criteria  
6 that the Court found to be true?

7 A He found that there was an affirmative finding  
8 that drugs or alcohol contributed to the commission of this  
9 offense.

10 Q And when a jury recommends probation, as was done  
11 in that Cause No. 10,690, who set the terms and conditions  
12 of probation?

13 A The judge.

14 Q All right. And what is contained in State's  
15 Exhibit 17, the judgment of guilt and the order placing him  
16 on probation, that would evidence that the judge decided to  
17 try to work on that problem?

18 A There's a special condition of community  
19 supervision.

20 Q And what was that special condition?

21 A Russell Don Johnson was ordered into the  
22 Substance Abuse Felony Punishment Facility, which is a drug  
23 treatment program.

24 Q And is the Substance Abuse Felony Punishment  
25 Facility known by the shorthand anagram of SAFFP?

1 A Correct.

2 Q So Russell got sent to SAFFP by the Court, right?

3 A Yes.

4 Q Tell us about SAFFP. How would that program  
5 compare to the other remedial measures tried by your  
6 department when somebody is involved in drugs?

7 A It's the most restrictive comprehensive treatment  
8 program that we have available to us.

9 Q Is it located at the various prison facilities  
10 sprinkled throughout the state of Texas?

11 A Yes, is it.

12 Q Is the facility itself set apart from the other  
13 inmate population such that only people that are -- have  
14 been sent to the SAFFP program are housed in that same  
15 building?

16 A That is correct.

17 Q About how long is that program, Mr. Edwards?

18 A The average stay is nine months.

19 Q Is there an aftercare requirement if somebody  
20 goes to the SAFFP program at prison?

21 A Yes.

22 Q And what does that consist of?

23 A That's what we call a transition treatment  
24 center, commonly referred to as the TTC. And the average  
25 stay there is three months.

1 Q Did Mr. Johnson get committed to a SAFFP  
2 facility?

3 A Yes.

4 Q About when did he finish up at the SAFFP  
5 facility, Mr. Edwards?

6 A It was in April of '98.

7 Q All right. And then after he completed that stay  
8 at the prison SAFFP, where did he go next?

9 A Did you say when did he finish the SAFFP?

10 Q Yes.

11 A Yes, that was in April of '98. And from there he  
12 bent to the TTC in Midland, Texas.

13 Q And when he went to the aftercare program in  
14 Midland, was he able to successfully complete that program?

15 A He was not.

16 Q And when was he discharged after being  
17 unsuccessful in completing that program?

18 A In June of '98.

19 Q When somebody is discharged from that facility  
20 after unsuccessfully completing what the Court has ordered  
21 him to do, what would you typically do?

22 A I file a violation report with your office.

23 Q All right. In June, middle of June of 1998, did  
24 your office have any additional contact with him after he  
25 got back from after being kicked out of the Midland

1 facility?

2 A Yes.

3 Q And directing your attention to June the 17th of  
4 1998 -- first let me lay the groundwork by asking you  
5 whether or not the judgment, State's Exhibit 17, contains  
6 in it an order setting forth all the terms and conditions  
7 of probation or supervision?

8 A Yes, it does.

9 Q Is one of those conditions that the defendant,  
10 while he is on probation, will refrain from the use,  
11 possession, or consumption of controlled substances,  
12 marijuana, and so forth?

13 A That is correct.

14 Q And does that order also require that the  
15 probationers, including Mr. Johnson, if requested by you or  
16 a member of your staff, one of the other probation  
17 officers, to submit on a random, unannounced basis, samples  
18 of urine from their body for the purpose of having it  
19 chemically analyzed?

20 A Yes, that's correct.

21 Q Was such a request made of Russell Don Johnson  
22 that he give a sample of urine to be tested at the lab  
23 after he got back here from Midland -- being kicked out of  
24 the Midland facility?

25 A Yes.

1 Q On what date was that request made?

2 A That was June the 17th, 1998.

3 Q All right. When a sample like that is taken,  
4 what happens to the sample to have it checked?

5 A It's sent to the lab that I have a contract with,  
6 Pharmchem Laboratory out of Fort Worth.

7 Q And does your contract with Pharmchem include a  
8 requirement that they generate a written report showing the  
9 results of the urinalysis testing?

10 A Yes, it does.

11 Q As a result did you receive such a written report  
12 in the case of Russell Don Johnson's urine sample taken on  
13 June 17th of 1998?

14 A Yes, I did.

15 Q As a result of receiving that report, did you  
16 make an additional violation report to my office regarding  
17 an alleged violation of his probationary terms?

18 A Yes, I did.

19 Q And to your knowledge was a motion subsequently  
20 filed by my office to revoke his probation?

21 A Yes.

22 Q And you are aware, are you not, that the offense  
23 of which he has now been convicted occurred July 28th,  
24 1998, about a little over a month after the urine sample  
25 was taken?

1 A That is correct.

2 Q Prior to the time that you could get the sample  
3 report back and get the motion filed and get him arrested,  
4 he was still out and that's when the robbery was committed,  
5 correct?

6 A That is correct.

7 Q Mr. Edwards, after that motion was filed by my  
8 office to revoke his probation in the Robert Joe Perez  
9 stabbing case, was a hearing held on that motion?

10 A Yes.

11 Q And was it held in this court on September the  
12 11th of 1998?

13 A Yes, it was.

14 Q And were you present in court when the defendant,  
15 Russell Don Johnson, entered a plea as to the allegation  
16 contained in that motion?

17 A Yes, I was.

18 Q And with regard to the allegation that he  
19 consumed a controlled substance, to-wit; marijuana, on or  
20 about June the 17th of 1998, what plea did he enter before  
21 the Court?

22 A He pled true.

23 Q And as a result of the hearing that was held on  
24 that day, what action, if any, was taken by the Court?

25 A His probation was revoked and he was sentenced to

1 10 years in the Institutional Division.

2 (State's Exhibit No. 18 was marked  
3 for identification by the court  
4 reporter.)

5 BY MR. RAY:

6 Q Let me hand you what's been marked for  
7 identification by the court reporter as State's Exhibit No.  
8 18 and ask if you can identify that document?

9 A Yes, I can.

10 Q What is State's 18?

11 A It's a Judgment Revoking Community Supervision in  
12 Cause No. 10,690, styled the State of Texas versus Russell  
13 Don Johnson.

14 Q And is the Russell Don Johnson that is the  
15 subject of that judgment, State's Exhibit 18, one and the  
16 same person as the Russell Don Johnson that you've  
17 identified as being present in court today?

18 A He is one and the same person.

19 MR. RAY: We'll offer State's 18, Your  
20 Honor.

21 MR. WATSON: No objection, Your Honor.

22 THE COURT: Eighteen is admitted.

23 (State's Exhibit No. 18 was  
24 received into evidence.)

25 BY MR. RAY:

1 Q Mr. Edwards, directing your attention to part of  
2 the community supervision order, is it true that the Court  
3 entered an amendment to the original probation order in  
4 this case?

5 A Yes.

6 Q And does the Court do that in many cases from  
7 time to time when subject matter arises that's appropriate  
8 subject?

9 A Yes.

10 Q And was the defendant, Russell Don Johnson,  
11 ordered as part of the judge's rules to legitimate a child  
12 that he had, in other words, to give it legal standing with  
13 him as the father?

14 A Yes.

15 Q To your knowledge was any effort made by  
16 Mr. Johnson to do that?

17 A Not to my knowledge.

18 Q Okay. When the Court enters an order telling  
19 somebody to legitimate a child, would that only be done if  
20 there was evidence indicating that they had become the  
21 parent of an illegitimate child?

22 A Yes.

23 MR. RAY: Pass the witness.

24 MR. WATSON: I have no questions of  
25 Mr. Edwards.

1                   THE COURT: That's all, thank you.

2                   MR. RAY: Your Honor, the State rests as to  
3 the punishment phase.

4                   MR. WATSON: Call Kathy Johnson.

5                   KATHY JOHNSON,

6 a witness called on behalf of the Defense, duly sworn to  
7 tell the truth, the whole truth, and nothing but the truth,  
8 testified on her oath as follows:

9  
10                  DIRECT EXAMINATION

11 BY MR. WATSON:

12 Q       Kathy, tell the jury your full name, please.

13 A       It's Kathy Johnson.

14 Q       And where do you live?

15 A       4119 Farm Road 1195, Mineral Wells, Texas.

16 Q       And you're Russell's mother?

17 A       Yes.

18 Q       And what is Russell's birthday?

19 A       September the 29th, 1980.

20 Q       So he was 18 here three or four months ago?

21 A       Uh-huh.

22 Q       Okay. Where was he born?

23 A       Here in Mineral Wells.

24 Q       Palo Pinto County?

25 A       Uh-huh.

1 Q And who is his father?

2 A Richard Ledell Johnson.

3 Q And is Mr. Johnson alive?

4 A No.

5 Q He died, what, in 1987?

6 A Yes, sir.

7 Q How old was Russell?

8 A He was six years old.

9 Q Did -- after that, did he have -- did Russell  
10 have anyone in the home as a father figure for any period  
11 of time?

12 A A stepfather.

13 Q And who was that?

14 A Weldon Burt Ross.

15 Q And you two are now divorced?

16 A Yes.

17 Q Where did he go to school initially, Russell,  
18 grade school, first grade?

19 A It was Travis.

20 Q Travis?

21 A Uh-huh.

22 Q And what is that, through the sixth grade?

23 A Uh-huh, yes, sir.

24 Q And then junior high?

25 A Yes, sir.

1 Q Then high school. What grade did Russell go  
2 through in high school, if you know?

3 A Ninth.

4 Q Did he eventually get his GED?

5 A Yes.

6 Q He currently has that certificate; is that  
7 correct?

8 A Yes.

9 Q Prior to Russell being 14 or 15 years of age,  
10 what kind of young man was he as far as your being a  
11 parent?

12 A He's always been a good son. Out of my three  
13 children, I had the least problems with Russell. He was  
14 always the one -- he always did the yard for me, he  
15 always -- anything I needed done, I could ask Russell to do  
16 it for me. He was always -- everybody in the family,  
17 Russell was always a hard worker. He was always -- he was  
18 just my good kid. He made good grades in school, the  
19 teachers all -- you know, I'd come in and they'd tell me,  
20 you know, how good he did. And he just -- I didn't have  
21 any problems with Russell. He was --

22 Q That was until he was like 15 years of age?

23 A Uh-huh.

24 Q Did something happen about that time when he was  
25 about 15 that you noticed a change in his life?

1           A     Yeah. He -- yes, sir, he -- I found out that he  
2 was doing drugs.

3           Q     Okay. And that's about when he was 15 roughly;  
4 is that correct?

5           A     Yes, about 14 actually, it was 14.

6           Q     And you're aware of all the problems that Russell  
7 has had, aren't you?

8           A     Yes, sir.

9           Q     You may not know all the details, but you know  
10 basically the specific incidents that he has been involved  
11 in?

12          A     Yes, sir.

13          Q     The jury has heard all of this today?

14          A     Yes, sir.

15          Q     You're not saying that drugs are an excuse, are  
16 you?

17          A     No, sir, they're not an excuse at all. They  
18 cause a lot of -- they destroy people's lives, but it's not  
19 an excuse for the type of behavior that Russell -- Russell  
20 has been involved in. Russell knows this. Russell knows  
21 how I feel about it. He knows that I love him more than  
22 anything in this world, but the things he's done are  
23 unacceptable. And he just -- he just, even though drugs  
24 are not an excuse, I honestly, honestly believe that this  
25 child would have never done the things that he's done if he

1 had not been on drugs.

2 Q So basically his problems started when he started  
3 doing drugs?

4 A Yes, sir.

5 Q Whatever the connection may be?

6 A Yes, sir.

7 Q Do you believe that people should be punished for  
8 their actions?

9 A Yes, sir.

10 Q You understand that Russell is going to go to  
11 prison?

12 A Yes, sir.

13 Q Sometime, more than likely today, this jury is  
14 going to sentence him to prison for some number of years.  
15 You understand that?

16 A Yes, sir.

17 Q As a mother, do you sometimes get disappointed in  
18 life about your children?

19 A Yes, sir.

20 Q And we're not always able to do what we want to  
21 with our kids, are we?

22 A No, sir.

23 Q Sometimes things don't turn out the way we like;  
24 is that correct?

25 A Yes, sir.

1 Q Is that basically the situation here with  
2 Russell?

3 A Yes, sir.

4 Q You're not here to make excuses for him, are you?

5 A No, there's no excuse for Russell's behavior.

6 Q And you've been informed or told at some point or  
7 at some point in time all of these violent acts that  
8 Russell has committed, you know these things, don't you?

9 A Yes, sir.

10 Q And as result of this, he's going to pay for it  
11 today?

12 A Yes, sir.

13 Q You understand that?

14 A Yes, sir.

15 Q Are you asking the jury to consider basically  
16 where he's been and what he's done as far as his life is  
17 concerned, as far as punishment is concerned?

18 A Yes, sir.

19 Q As far as his age is concerned, are you asking  
20 them to consider that?

21 A Especially his age, he's 18 years old. There's  
22 always, always hope, always somewhere there has to be --  
23 you can't give up on an 18-year-old boy. The past three  
24 years he's been involved in some terrible things, he's done  
25 some terrible, horrible things that he knows how I feel

1 about them. I can't stand it that he's done these things,  
2 but he's 18 years old.

3 For the past three years he's been involved with  
4 people that do, things they shouldn't do and drugs. Before  
5 that he's always been -- he was a good person. He's got a  
6 good heart, he's a good person, he's a good son. This boy  
7 gives me so much love. He just -- he loves me so how much,  
8 he's so good to me. He gives me so much respect. And to  
9 see what has happened to him in the past three years --  
10 he's 18 years old, and I know what he's done is wrong.

11 I know -- for me to sit here and say -- I'm a  
12 mother, and I know he has to go to prison, I know he has to  
13 pay for what he's done, but he's 18 years old and he has to  
14 pay for what he has done, but there's -- he's got to have  
15 a -- at some point there has to be hope that he can -- he's  
16 going to -- whatever he gets, he's going to grow, he's  
17 going to have time to be away from the things that he's  
18 gotten involved with.

19 MR. RAY: Excuse me just a minute. Your  
20 Honor, I'm going to interpose an objection. It long ago  
21 stopped being a responsive answer and became a speech.

22 MR. WATSON: I agree, Your Honor.

23 THE WITNESS: I'm sorry, I'm sorry.

24 BY MR. WATSON:

25 Q I know. Just answer the question. Mr. Ray is

1 correct about that. Are you asking the jury to consider  
2 the situation about his age as far as any punishment is  
3 concerned?

4 A Yes, sir.

5 Q Are you asking the jury to consider and be  
6 reminded that prior to him getting involved with certain  
7 people and certain substances, he was not a problem child  
8 at all?

9 A Yes, sir.

10 Q Are you asking him to consider a reasonable sum  
11 of time that would allow him to get out of prison and get  
12 back and try to lead a constructive life?

13 MR. RAY: Your Honor, I'm going to object,  
14 that question -- the answer would invade the province of  
15 the jury in deciding.

16 THE COURT: Well, I'll permit the question  
17 and answer.

18 BY MR. RAY:

19 Q Are you asking them to consider a reasonable sum,  
20 something other than life in prison for this young man?

21 A Yes, sir.

22 Q So when he did get out of prison he could  
23 hopefully come back and live a constructive life?

24 A Yes, sir.

25 MR. WATSON: That's all the questions I

1 have.

2

3 CROSS-EXAMINATION

4 BY MR. RAY:

5 Q Ms. Johnson, back in April of 1997, you  
6 participated in the proceedings where Russell was tried for  
7 stabbing Joe Perez in the back four times, did you not?

8 A Yes, sir.

9 Q And did you testify in those proceedings?

10 A Yes, sir.

11 Q And, specifically, did you ask that jury to  
12 consider Russell's age, I mean, very similar to what you  
13 asked today?

14 A Yes, sir.

15 Q And, specifically, did you ask them to take that  
16 into account and the drug business into account and so  
17 forth?

18 A Yes, sir.

19 Q Right? And you know that after they basically  
20 gave Russell a chance, that almost zero time goes by, a  
21 month, from the time that he gets out that he is already  
22 engaged in aggravated assault and robbery of an old man  
23 nearly 72 years of age? Do you know that?

24 A Yes, sir.

25 Q And you also know that even though you ask the

1       jury to consider the drug involvement, that within three  
2       days of the time he was released from the most intensive  
3       drug treatment and rehabilitation program available to the  
4       courts in the state of Texas, that he was immediately,  
5       within three days, back engaged in substance abuse again?  
6       Are you aware of that?

7           A     Yes, sir.

8           Q     And even though you asked the previous jury to  
9       consider those things, and they apparently did, this may be  
10      a difficult question for you, but it would be fair to  
11      conclude, wouldn't it, that Russell just didn't benefit by  
12      being given that break by that jury, that we're back with  
13      extremely violent, dangerous conduct and substance abuse  
14      immediately? Fair enough?

15          A     Yes, sir.

16          Q     And are you aware that the testimony of the  
17      victim in this case and the medical professional who  
18      treated him, that but for the grace of God and the old man  
19      getting his arm up just in time, this 36-inch pipe wrench  
20      would have smashed into that old man's head? Are you aware  
21      of that?

22          A     Yes, sir.

23          Q     Do you recall testifying previously, Ms. Johnson,  
24      downstairs in the hearing when Russell was certified to be  
25      tried as an adult in the Robert Joe Perez stabbing? Do you

1 remember testifying down there?

2 A Yes, sir.

3 Q And, similarly, in your testimony in that trial,  
4 do you recall testifying that when Russell got back from  
5 TYC after being gone for a year that he had immediately  
6 violated his juvenile probation and if only the cops had  
7 done their job and gotten him picked -- or Mr. Hunter had  
8 done their job and gotten him picked up and arrested, then  
9 he wouldn't have been out of jail and therefore he couldn't  
10 have stabbed Robert Perez? Do you remember basically  
11 talking about that?

12 A Yes, sir.

13 Q Well, from that, even though it would be  
14 difficult for his mother, would you agree with me that even  
15 you recognize that Russell is somebody that has to be  
16 locked up or there is this fear that he will engage in  
17 violence?

18 A Yes, sir.

19 MR. RAY: I have no further questions,  
20 ma'am.

21 MR. WATSON: That's all the questions I  
22 have.

23 THE COURT: That's all. Thank you,  
24 Ms. Johnson.

25 MR. WATSON: That's all the testimony we

1 have, Your Honor.

2 MR. RAY: State closes, Your Honor.

3 MR. WATSON: We close.

4 THE COURT: That concludes the evidence in  
5 the case, ladies and gentlemen. I have a charge about  
6 ready to you -- ready to give to you. We can go ahead with  
7 this case this morning, I'll need to recess, oh, 10 or 15  
8 minutes, then the charge would be read to you and the  
9 attorneys would make brief closing remarks. That would  
10 bring us close twelve o'clock.

11 Once you begin deliberations on the case, the law  
12 requires that I keep you together. So you'd either have to  
13 start deliberating right then and stay together or I'd have  
14 to keep you together while you eat, you can go across the  
15 street or we could recess now until say 12:30, and you  
16 could come back -- you could separate now and you could  
17 come back and we could finish at 12:30. Do you have a  
18 feeling about which way you'd rather go?

19 PRESIDING JUROR: I think we would prefer to  
20 recess.

21 THE COURT: You would like to recess? Is  
22 that generally the consensus?

23 THE JURY: Yeah.

24 THE COURT: All right. We'll recess then.  
25 Please remember your instructions. Even though the

1 evidence is completed, you can't discuss this case. And  
2 let's meet back at 12:30 and finish the case. Thank you  
3 very much.

4 (Jury out at 11:15 a.m.)

5 THE COURT: Objections to the charge?

6 MR. RAY: State doesn't have any objection,  
7 Your Honor.

8 MR. WATSON: Judge, I don't have any  
9 either.

10 (Defendant's Exhibit No. 1 was  
11 marked for identification by the court  
12 reporter.)

13 (Jury back at 12:28 p.m.)

14 THE COURT: Ladies and gentlemen, I will  
15 read the charge to you, the attorneys will then --

16 MR. WATSON: Your Honor, excuse me --

17 THE COURT: Oh, excuse me, excuse me. All  
18 right.

19 MR. WATSON: I didn't mean to interrupt the  
20 Court. Your Honor, with the Court's permission, I would  
21 like to have the opportunity to reopen briefly.

22 THE COURT: Yes, sir.

23 MR. WATSON: The defendant and the State  
24 have entered into a stipulation of evidence that on  
25 September the 2nd of 1998, in this court, an order was

1 entered establishing the parent-child relationship between  
2 Russell Don Johnson and the minor child, Antonio Miguel  
3 Reyes. This matter came up previous and we were not aware  
4 of this, but I did want to get that before the jury today.

5 MR. RAY: It is so stipulated, Your Honor.

6 MR. WATSON: I would offer No. 1.

7 THE COURT: All right. It's admitted as  
8 Defendant's 1.

9 (Defendant's Exhibit No. 1 was  
10 received into evidence.)

11 MR. WATSON: That's all we have, Your Honor,  
12 we close.

13 MR. RAY: We close.

14 THE COURT: All right. Again, I will read  
15 the charge to you and the attorneys will briefly address  
16 you and you will retire to deliberate the punishment in  
17 this case.

18 (Court's charge read.)

19 And, again, there is a form for your verdict on  
20 the last page of if charge. Gentleman.

21 MR. RAY: May it please the Court?

22 THE COURT: Yes, sir.

23 MR. RAY: Mr. Watson. Ladies and gentlemen,  
24 as the judge indicated, we had have a few minutes making  
25 our closing remarks before you assess punishment in this

1 case. The legal issues are quite simply stated and  
2 summarized this way.

3 The range of punishment for the offense of which  
4 you have convicted Russell Don Johnson is from either life  
5 or any term of years not less than five, nor more than  
6 ninety-nine, and the option of assessing a fine of any  
7 amount not to exceed \$10,000. There is no option on the  
8 punishment number of years, there is a choice on the fine.  
9 It can be zero or any amount in between zero and \$10,000.

10 The issue is what, within that wide range of  
11 punishment, would be appropriate for you to assess in this  
12 case given the facts and circumstances that have been  
13 proven to you. During Voir Dire you were each qualified on  
14 the following foundation; that is that in a proper case for  
15 it, you would be the kind of person who would, if the facts  
16 warranted it, consider the lower range of punishment. And  
17 if the facts and circumstances warranted it, you would be  
18 the kind of person who would have the courage to assess all  
19 the way up to and including the maximum punishment of life  
20 in prison or ninety-nine years. What should you do in this  
21 case based on the evidence?

22 During my opening statement prior to the  
23 punishment phase, I indicated to you that we would prove to  
24 you the rest of the story so that you would know about  
25 Russell Don Johnson and his propensity for violence. This

1 is not, as you well know now, an isolated instance of  
2 violence. This is the culmination of an entire track  
3 record of violence.

4                 The things that I suggested to you that would be  
5 proven to you are not so because I said that we would prove  
6 them to you, they are so because you have now heard the  
7 irrefuted evidence that they are so. You have the  
8 documents and the eyewitness testimony, where appropriate,  
9 as to a menu of violence. You stop and think about what  
10 this man's conduct tells you about him.

11               One could argue that Russell Don Johnson is 18  
12 years old, and he is. One could argue that you ought to  
13 say, oh, he's 18 years old, let's give him 10 or 15, 20  
14 years in prison, the lower end of the range of punishment.

15               One could argue that, but in response to that I  
16 want to challenge you to use your good common sense and ask  
17 yourself, is it reasonable to think that simply because he  
18 is 18 years old he can't hurt a citizen just as badly or  
19 even kill somebody by violent conduct just because he's 18  
20 years old? That doesn't make sense. He is a violent  
21 individual repeatedly after time after time after time.  
22 How much does it take for us to finally say that it is time  
23 to remove someone for a significant period of time so that  
24 society is protected? There are people like that. You  
25 have the evidence before you that demonstrates that Russell

1 Don Johnson is exactly that kind of seed.

2 Now, the things that we've proved to you during  
3 the punishment phase of the trial show you unequivocally  
4 that on at least nine occasions, eight of which are  
5 violent, that Russell Don Johnson has engaged in the kind  
6 of conduct that alone would be worthy of significant  
7 punishment. When you add all of that up, it is simply too  
8 much.

9 We talk about punishment. What are the goals of  
10 punishment? What should you-all think about when you're  
11 deliberating your verdict? You can think about  
12 rehabilitation, that's one of the goals certainly of  
13 punishment. And I would suggest to you that a jury  
14 impaneled much like you has tried that. This Court has  
15 tried that.

16 There has been some recognition of the fact that  
17 he was young. There was some finding and recognition of a  
18 claim by him that, oh, I wouldn't have done this if I  
19 hadn't been on drugs. And what was tried? A  
20 rehabilitative effort that was tried to remove him for nine  
21 months to a year in the most intensive lengthy  
22 strength-filled restrictive program that is available to  
23 the court system. And what good did it do? He didn't even  
24 finish the aftercare, the halfway house follow-up care  
25 before he violates enough rules to get kicked out of that.

1                  Does he demonstrate that he's a person worthy of  
2 or that he's a good risk for rehabilitation. No. And then  
3 you know within three days of the time he got out kicked  
4 out of that facility in Midland that he's back substance  
5 abusing again after that was the whole purpose for why he  
6 was sent away for a year was let's address this problem.  
7 Let's say, okay, you're young. Let's say, okay, you got  
8 involved in drugs. Let's bring the programs to the table.  
9 Let's be lenient, let's try 10 years with him and let's  
10 watch him. Didn't work, folks, and you know it.

11                And when he got out, it lasted about a month  
12 before all that he had learned from being removed and  
13 locked up is demonstrated when he takes this weapon, and  
14 with no regard for Mr. Pontremoli, swings it viciously in a  
15 direction towards the part of Mr. Pontremoli's body that  
16 encompasses his brain.

17                And you heard the testimony of Dr.  
18 Allensworth. But for the grace of God and that arm  
19 intervening, you know what that doctor told you was most  
20 likely to have happened to Mr. Pontremoli.

21                He says, give me a break, I'm young. Did he care  
22 anything about Mr. Pontremoli? Did he give him any break  
23 or give any consideration to that old gentleman? Not in  
24 the least.

25                And what did you have plotting the trend line of

1 the collision between Russell Don Johnson and society? You  
2 have a stabbing of Raymond Vargas, an unarmed Raymond  
3 Vargas, on August the 17th of 1995. Before he can even get  
4 to court 12 or 13 days later, you have the instance where  
5 he's already involved in violence slamming a chair up  
6 against a peer's head over in Parker County Juvenile  
7 Facility. And not only that, he demonstrated that  
8 aggressive tendency that he had -- you saw the size of  
9 Henry Williams that was on the staff over at the facility.  
10 He even charges at him and has to be restrained. Does that  
11 sound like somebody that's a good risk?

12           And then what benefit did it do when he got sent  
13 away to TYC for a year, remove him for a year? He gets  
14 back and, folks, he gets back September of 1996. Plot this  
15 trend line with me. September the 11th of 1996, within  
16 days of the time he gets back, he's already in a fight out  
17 at school and removed from the regular classroom  
18 environment and put in ISS, in-school suspension. That's  
19 within days, folks, of being given the benefit of what we  
20 have in our system to try to save somebody.

21           Oh, let's pay attention that he's young. Okay.  
22 We did. And he gets out and he's already in a fight. Next  
23 thing that happens is that on September the 23rd, 12 days  
24 later, he is removed from ISS on the regular campus to  
25 alternative education for why, assaultive conduct and gang

1 activity. Days, 11, 12 days. September 23rd is when that  
2 happened.

3 How long did he last at AEC? October the 18th,  
4 continued misbehavior, not showing up, walking, leaving,  
5 fights, whatever, he's expelled on October the 18th of  
6 1996. Okay. He's not in school anymore.

7 And then from October the 18th, we make it 23  
8 more days before the incident with Scott Cienega and the  
9 screwdriver. And you know that screwdriver was pommeling  
10 down toward Scott Cienega's left chest area. He had no  
11 regard for Scott Cienega. He brought the weapon, and he  
12 used it. This is after we've tried remedial work. Okay.  
13 November the 11th, before he's even arrested for that  
14 incident, December the 5th, 24 more days is all that goes  
15 by before he stabs his buddy, Robert Joe Perez, in the back  
16 four times with a knife and barely missing his spine by a  
17 quarter of an inch. And he was certified to be tried as an  
18 adult and was and was convicted. And that jury heard the  
19 same appeal, the same appellation, oh, he's young. How much  
20 does it take, folks, before you know that he is absolutely  
21 a danger to society?

22 Rehabilitation, I suggest to you unequivocally,  
23 has been tried. It didn't work. It doesn't take him days  
24 to start reoffending and hurting folks.

25 What else? Retribution. Retribution is a

1 punishment philosophy that deals with punishing the  
2 conduct. What worse conduct could you have than that you  
3 have in this case? But for Mr. Pontremoli's arm, how much  
4 worse could it get? So little he could have taken that old  
5 man's money without hurting him, he didn't care to. He  
6 didn't care about the human being there. So little regard  
7 for other people's bodies and lives. Retribution certainly  
8 is something you ought to think about. This is a serious  
9 crime, the potential for harm to that man is the most.

10 Deterrence, punishment is about deterrence. Let  
11 whatever you choose in your punishment be sufficient to  
12 deter or warn others that this kind of conduct will not be  
13 tolerated. What you do today matters. It sends out a  
14 message. Please think about that when you're assessing  
15 punishment. Please help us deter crime.

16 It is bad enough what young people do to each  
17 other with shootings and stabbings and so forth, but  
18 somehow we have let them in this country. The thugs and  
19 the violent people take away our neighborhoods, our  
20 schools, and we're held prisoner by that violence. And the  
21 only way to take it back was to say we won't stand for it.

22 You're the only jury that's working today in Palo  
23 Pinto County. What kind of a message will you send out  
24 about violence in our society? Will you say, I've had  
25 enough, you're not going to take the safety of my streets.

1 You can't walk into Mr. Pontremoli's store and pommel with  
2 a 36-inch pipe wrench to steal money from him or just  
3 because your PO'd about a comment about wearing baggy  
4 britches, so little regard with life.

5 And, finally, I think that punishment is  
6 ultimately, in this case, with as many as incidents of  
7 violence as you have, about the protection of society.  
8 Some people demonstrate that they cannot be rehabilitated.  
9 Russell Don Johnson is one of those. And when he's out, he  
10 will hurt you. Even his mother has to concede to that.  
11 And she knows him better than anyone else, certainly better  
12 than you could know him inside of two days.

13 Bless her heart, she's a victim of Russell Don  
14 Johnson as well as Mr. Pontremoli. She knows she answered  
15 that question, that if only the police would have locked  
16 him up, he wouldn't have been out where he could stab  
17 Robert Joe Perez. Well, does that mean to you that this is  
18 a person that has to be locked up in order for society to  
19 be protected?

20 There is no excuse for that kind of conduct, and  
21 it is unacceptable in our society. The issue is what will  
22 you do about it, what will you do about it? You have a  
23 wide range. I would like to suggest to you that we have  
24 tried rehabilitation and it is time to protect society and  
25 to deter others from this kind of violence, the stabbings,

1 the bludgeonings.

2                   On the last page of the verdict form, ladies and  
3 gentlemen -- or the last page of the charge is a verdict  
4 form. I've suggested that you consider, because of the  
5 evidence, not anything else -- Mr. Ray if you bring me a  
6 proper case for it, I'll have the courage. In a proper  
7 case for it, I will consider stiff punishment if you prove  
8 to me that it is deserved; and we've done just that. Eight  
9 separate incidents of violence alone.

10                  I'm going to suggest to you that you consider the  
11 range of 40 years up to 99 or life if you choose to assess  
12 that. And the matter of a fine in this case is not about  
13 money, although they certainly rob -- or Russell Don  
14 Johnson certainly robbed Mr. Pontremoli, but the case is  
15 not about money. If you want to assess a fine, please feel  
16 free to do so, you pick the number anywhere between zero  
17 and \$10,000. A parole officer someday may make him pay \$50  
18 a month or \$100 a month as a reminder, but that's up to  
19 you. I would suggest to you because of the evidence that  
20 you've heard and the commitment that you made that in a  
21 proper case for it, you're the kind of people that could  
22 consider stiff punishment. He deserves it, society needs  
23 protection from him. People will be hurt if Russell Don  
24 Johnson is not locked up for it.

25                  The previous jury made that gamble about turning

1 him loose to walk among us. You trust that volatile temper  
2 and that propensity for violence in your neighborhood or  
3 adjacent to your family? Please don't do that, help us to  
4 protect society and increase and define the quality of life  
5 in Palo Pinto County by your verdict. The evidence demands  
6 that you do that. Thank you very much.

7 MR. WATSON: If it please the Court?

8 THE COURT: Yes, sir.

9 MR. WATSON: Mr. Ray. Ladies and gentlemen,  
10 briefly I want to go over some things. Under Mr. Ray's  
11 recommendation to you, Mr. Johnson would be either 38 or 48  
12 years of age when he was eligible for parole under the  
13 guidelines here. It says he must serve one-half of the  
14 sentence, whichever is less. Under 40 to 99, he would  
15 either be 38 or 48 depending on what number you were to  
16 pick, if that's what you were to decide. I don't think  
17 that's appropriate.

18 We're not using youth as an excuse, we're using  
19 it as the truth, it's what we have. We're not making up  
20 these numbers, he is 18 years of age. He has had a very  
21 violent checkered life in three years. You heard three  
22 people testify they knew him prior to his 15th birthday or  
23 14th birthday, he was a good kid. They didn't know much  
24 about him since then. You know much about him since then  
25 because he was doing dope. Not an excuse, but it's true.

1                   The problems he has is not -- we're not talking  
2 about a 40-year-old man who has done this over a 25-year  
3 period. We're talking about a young man who got into some  
4 problems, he's paying for it. He did whatever he did in a  
5 three-year span, all between 14 and 17 years of age. I  
6 think that's important. We are not trying to create his  
7 age, that's just the facts we have to deal with.

8                   You heard his mother testify. I think she's very  
9 candid with you, very honest. She doesn't like this, but  
10 he's still her son. She's asking you to consider giving  
11 him an opportunity to get out at a decent age and come back  
12 and try to do something with his life. He's got this  
13 three-year-old son that we've found out has been  
14 legitimized, which is what the Court ordered, we weren't  
15 aware of that. That's a step.

16                  If he's given 99 years or 40 years, this child  
17 will be gone before he's eligible -- he won't even see him,  
18 no opportunity to see this child. I don't think that's  
19 right. Again, age is simply a fact, we have to deal with  
20 it.

21                  No one disputes his conduct, especially his  
22 mother. She said, I did what I could and it didn't work.  
23 All of us who have children hope that our children do what  
24 we want them to do. They don't always do that. You sit  
25 there and see your kids when they're three or four years of

1 age, sometimes they do right, sometimes they don't. We've  
2 got a situation where a mother is coming up here not asking  
3 you to do any favors, she's asking you to consider what  
4 this young man is going to be doing for the rest of his  
5 life.

6 He has never been anywhere other than on  
7 probation, if you will. The prior jury had a probation  
8 available to him, you don't. Probation was available, they  
9 took that chance. He's going to go to prison, there's no  
10 question about that.

11 Ms. Johnson, she works. Like she said, he was  
12 the least problems of all her kids until he started doing  
13 dope. And, you know, we all read about dope. Dope is a  
14 bad thing, don't misunderstand me. I deal with it in these  
15 courts all the time. There's nothing good about it, but  
16 that is also a fact about this case that I can't ignore.  
17 It's in it, it's here. It is probably the reason he did  
18 some of these things. And it doesn't excuse it, it's not a  
19 defense, but it is an explanation of how he's lived his  
20 life for the last three years. I think that's important.

21 You know I would be -- I would not feel  
22 comfortable with Ms. Johnson getting up there and saying,  
23 hey, my son is a good kid, don't do anything to him at  
24 all. That's not right, you know that, y'all heard the  
25 evidence. She didn't tell you that. She just said, I want

1 you to consider, give him an opportunity when he gets out.  
2 Don't make him an old man when he gets out of here, give  
3 him a chance. That's what I'm asking you to do.

4 Now, I think it's very important, as I mentioned  
5 to you, his conduct was as a freshman, sophomore -- or,  
6 actually, eighth-grader and freshman and sophomore in high  
7 school, that age. He'd still be in high school if he  
8 wasn't in jail, that's his age limit we're talking about.  
9 That's important.

10 Another thing that we talked about.

11 Mr. McAllester mentioned this morning, I asked him a  
12 question. Let's assume Mr. Ray's scenario that  
13 Mr. Pontremoli does not put up his hand, he's killed. He  
14 couldn't get any more for that than Mr. Ray is asking for  
15 this offense. It's the same punishment range. That's not  
16 right. I don't think that's appropriate to say we're going  
17 to give him 40 or 99 years when you couldn't give him more  
18 than that for murder if the man had died. I don't think  
19 that's appropriate at all.

20 Kids have to make decisions; he obviously made  
21 many, many bad ones. The first one, he was getting  
22 involved with people that use dope, therefore, he used  
23 dope. That's the first decision he made that was bad. He  
24 got into some violent confrontations with other people,  
25 those obviously were bad.

1           We didn't always -- our children don't always  
2 make decisions we want them to make necessarily in spite of  
3 what age they may be. I'm sure Mineral Wells has a lot of  
4 people that have kids that are now 25 and 30 and 35 years  
5 year of age that might have had problems similar to this,  
6 perhaps, and they got through it without this. And they  
7 probably go to bed at night and say, we're thankful that  
8 this happened, that our child is not going to go prison  
9 like Russell Johnson. There's a lot of folks out there  
10 that are probably very thankful.

11           They did what they could. And maybe it works out  
12 better for others -- for some others more than  
13 Mr. Johnson. Unfortunately, the children don't always make  
14 the right choices. Some pay more than others and Mr.  
15 Johnson has to pay, there's no question about it. He's  
16 going to pay.

17           Eighteen years of age with a possibility of  
18 spending 30 years in prison, 30 years flat, day for day,  
19 that's what this charge tells you. I don't think that is  
20 appropriate based on what you've heard.

21           Everything was laid out for you, you heard all  
22 the evidence, you heard everything he did. His mother told  
23 you about his conduct, I don't think that's appropriate.  
24 I'm going to ask you to consider 15 to 20 years. Even  
25 after seven and a half, he'll be 15, day for day; 20 years

1 will be 10, that's a long time. We're not talking about  
2 paying a \$200 fine on a speeding ticket. We're talking  
3 about 10 years even under my scenario, day for day.

4           When he's 29 years of age, he comes out, his kid  
5 is 13, his child will be the same age as when he started  
6 all his problems. You put that in that perspective. I  
7 think these things are important.

8           Nobody is asking you to do anything magic about  
9 trying to undo all of this, I realize that can't be  
10 done. But you can consider the circumstances and give some  
11 thought to what this boy is going to be doing in the next  
12 few years, however long he's going to be in prison. Those  
13 of you that have children, just think about that.  
14 Fortunately, I'm sure y'all didn't have these problems.  
15 And I'm not blaming y'all for not having them, I'm not  
16 blaming Ms. Johnson for having them, these things happen  
17 sometimes. And I just ask you to consider that.

18           Here's a mother who comes up here -- we've  
19 talked, she and I spent a lot of time visiting. She said,  
20 I'll be the first one to tell you, I don't like a thing  
21 that he did. I'm not proud of any of it, but this is my  
22 son and I want to do what I can to help this jury  
23 understand how he has lived the last three years of his  
24 life. And that's what I'm asking you to consider. If you  
25 give him 15 or 20 years, he's going to be gone at least

1 seven and a half years.

2           The fine, I was appointed by the judge to  
3 represent him, he has no money, whatever you think is  
4 appropriate there.

5           But on page -- the last page, let me just read  
6 this briefly. Under the law applicable to this case, the  
7 defendant is sentenced to a term of imprisonment, he will  
8 not become eligible for parole until the actual time served  
9 equals one-half or 30 years, whichever is less. Now,  
10 that's the basic starting point with whatever punishment  
11 you put on this young man. I'm just asking you to  
12 consider, again, the short period of time in which he did  
13 his business compared to a 40-year-old man who's been doing  
14 this for 20 years, all of his adult life, think about that.

15          And, you know, it may be a blessing. It may be a  
16 blessing that we're here today. It very well may be  
17 because I think his mother told you, and basically, this  
18 had to stop. There's no question about it. And you're  
19 going to be the ones who decide what's going to happen. It  
20 may be a blessing that he's here today, if you will, not  
21 trying to be flippant, to get this over with. It had to  
22 stop somewhere. But when you consider that you're going to  
23 make the final decision on this, remember these things,  
24 remember his age, remember the time period involved,  
25 remember what happened, how it happened. It's not an

1 excuse, but it is an explanation of what he did and why he  
2 did it.

3 I'm asking you to consider 15 to 20 years, and I  
4 think that's appropriate under this case. But, like I  
5 said, if the man had been killed, he couldn't have gotten  
6 more than this. That doesn't make sense.

7 On the back page it says, form of verdict. I'm  
8 asking you to fill in 15 to 20 years and no fine, he  
9 couldn't pay the fine anyway. I think that's appropriate  
10 under these circumstances. Thank you.

11 MR. RAY: Ladies and gentlemen, just briefly  
12 I want to make about four points in rebuttal. One, it may  
13 be a blessing we're here today, this has to stop. We've  
14 been here before with this guy, and it didn't do any good  
15 at all. It only took him a month of freedom to swing this  
16 at Mr. Pontremoli's head.

17 Second point. The only reason given to you to  
18 suggest that you should not assess punishment in the range  
19 that I have suggested, supported by the evidence, is that  
20 he is 18 years old. Counsel says he is a young man. He is  
21 a young man that can kill you or injure you just as deadly  
22 and just as surely as someone who is 40 or 50 years old.  
23 That requires nothing more than common sense when you are  
24 triggered by and have a fuse like he's demonstrated.

25 Number three, Mr. Watson says that he couldn't

1 get punished any more for murder than he can for aggravated  
2 robbery or aggravated sexual assault. Well, that's  
3 true, but you know what? It's not Russell Don Johnson's  
4 fault that Mr. Pontremoli didn't get hurt more seriously or  
5 killed. He is the same actor. It is the same conduct. It  
6 is the same swing of this weapon that would do both of  
7 those results. Don't you see that it's not his fault that  
8 we're not trying a murder case. He didn't care. He didn't  
9 have to hurt that old man, he just doesn't care. He's mean  
10 and he will hurt you.

11 Point four, don't punish me, I'm young. He chose  
12 the way of life that he's been living, repeated and  
13 underscored eight or nine times with violence. Listen to  
14 this, quote, his mother, she did what she could, and it  
15 didn't work. You know, Mr. Hunter did what he could, and  
16 it didn't work. Texas Youth Commission did what they  
17 could, and it didn't work. The previous trial jury did  
18 what they could, and it didn't work. This Court did what  
19 it could, and it didn't work. Mr. Edwards and his office  
20 did what they could, and it didn't work. For whatever it's  
21 worth, I did what I could, and it didn't work. It's time  
22 to be held accountable. He is a violent individual.

23 Don't let him go down that path anymore. Don't  
24 let him hurt anybody else. How would you feel? You're the  
25 only ones that can stop it by your verdict -- should be

1 somewhere in that range, 40 to 99 years would be  
2 appropriate for this much violence. Thank you very much.

3 THE COURT: Will you go with the bailiff  
4 again to the jury room, ladies and gentlemen?

5 (Jury out at 1:01 p.m. to  
6 deliberate on punishment.)

7 (Jury in at 3:20 p.m.)

8 THE COURT: All right. Mr. Barrett, has the  
9 jury reached a verdict?

10 PRESIDING JUROR: Yes, sir, we have.

11 THE COURT: We, the jury, having found the  
12 defendant, Russell Don Johnson, guilty of the offense of  
13 aggravated robbery as alleged in the indictment, assess his  
14 punishment at 30 years confinement and no fine. Is that  
15 the unanimous verdict of the jury and so say you all?

16 THE JURY: It is.

17 THE COURT: I will accept your verdict in  
18 the case, ladies and gentlemen. I appreciate your service  
19 in this case and your willingness to help us this week.  
20 You were sworn to secrecy at the beginning of the trial;  
21 you're now released from that oath. You may discuss this  
22 case or not discuss it as you see fit. Your checks will be  
23 mailed to you. If any of you need a certificate for your  
24 employer, you may get one in the clerk's office. Again,  
25 thank you very much and merry Christmas.

(Jury dismissed at 3:21 p.m.)

THE COURT: All right. Any reason why the defendant should not now be sentenced, Mr. Watson?

MR. WATSON: No, Your Honor.

THE COURT: You having been found guilty,  
Mr. Johnson, by jury verdict of the offense of aggravated  
robbery, the Court having accepted that verdict, the jury  
having assessed punishment at 30 years confinement in the  
Institutional Division of the Department of Criminal  
Justice, and the Court having accepted that verdict, it is  
therefore the judgment of the Court that you're guilty of  
the offense alleged in the indictment, aggravated robbery,  
and you're sentenced to confinement in the Institutional  
Division for 30 years. You're given credit on that  
sentence as required by law for the time you've been in  
jail since you were arrested for this offense. Your  
custody is remanded to the sheriff.

MR. WATSON: Thank you, Your Honor.

(Whereupon, the proceedings were concluded.)

1 THE STATE OF TEXAS ) (

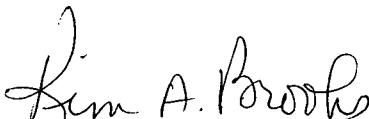
2 COUNTY OF PALO PINTO ) (

3  
4 I, Kim A. Brooks, Official Court Reporter for the 29th  
5 Judicial District of Palo Pinto County, State of Texas, do  
6 hereby certify that the above and foregoing contains a true  
7 and correct transcription of all portions of evidence and  
8 other proceedings requested in writing by counsel for the  
9 parties to be included in the reporter's record in the  
10 above-styled and numbered cause, all of which occurred in  
11 open court or in chambers and were reported by me.

12 I further certify that this transcription of the  
13 proceedings truly and correctly reflects the exhibits, if  
14 any, offered by the respective parties.

15 I further certify that the total charges for the  
16 transcript, including any exhibits, is \$ 1130<sup>00</sup>.  
17

18 WITNESS my hand this the 9<sup>th</sup> day of February,  
1999.

19  
20   
21 Kim A. Brooks, CSR, RPR  
22 Official Court Reporter  
23 29th Judicial District  
24 Palo Pinto County, Texas

25 Certification No: 4650  
Date of Expiration: 12/31/99  
Business Address: P.O. Box 187  
Palo Pinto, Texas 76484  
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**E X H I B I T S**

HMC

STIPULATION OF EVIDENCE

CAUSE NO. 444

STATE OF TEXAS

IN THE COUNTY COURT  
OF PALO PINTO COUNTY  
SITTING AS A JUVENILE COURT

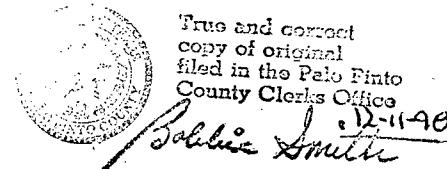
COUNTY OF PALO PINTO

IN THE MATTER OF RUSSELL DON JOHNSON

COMES NOW RUSSELL DON JOHNSON, the respondent in the above entitled and numbered cause, in writing and in open court, and consents to the stipulation of the evidence in this case and in so doing expressly waives the appearance, confrontation and cross-examination of witness. I further consent to the introduction of testimony by affidavits, written statements of witnesses and other documentary evidence. Accordingly, having waived my Federal and State constitutional rights against self-incrimination and after having been sworn, upon oath, I judicially confess to the following facts and agree and stipulate that these facts are true and correct and constitute the evidence in this case:

The said child engaged in delinquent conduct, to-wit: That on or about the 17th day of August, A.D. 1995, the said child violated a penal law of this State punishable by imprisonment/confinement in jail, to-wit: Article 22.02 of the Texas Penal Code, in that he did then and there in the County of Palo Pinto and State of Texas, intentionally, knowingly and recklessly cause serious bodily injury to Raymond Vargas by then and there stabbing him with a pair of scissors on the wrist and upper left arm.

Russell Johnson  
Respondent  
Mark Murphy  
Attorney for the Respondent  
State Bar # 18526950



STATE'S  
EXHIBIT  
#13

Px 2

Sworn and subscribed to before me the undersigned authority  
on this the 30th day of August, A.D. 1995.

*Bobbie Smith*  
Clerk, Juvenile Court of  
Palo Pinto County, Texas

Approved by the Court:

*Harold M. Couch*  
Judge of the County Court  
Palo Pinto County, Texas  
Sitting As a Juvenile Court of  
Said County

FILED  
At 11:45 O'Clock A.M.

*Bobbie Smith*  
AUG 30 1995  
Clerk of the County Court  
Palo Pinto County, Texas  
By \_\_\_\_\_ Deputy



True and correct  
copy of original  
filed in the Palo Pinto  
County Clerk's Office

*Bobbie Smith* 12-11-98

RECEIVED  
Palo Pinto County Clerk's Office  
12-11-98

JUDGMENT

CAUSE NO. 444

STATE OF TEXAS

IN THE COUNTY COURT  
OF PALO PINTO COUNTY  
SITTING AS A JUVENILE COURT

→ COUNTY OF PALO PINTO

IN THE MATTER OF RUSSELL DON JOHNSON

ON THIS the 30th day of August, A.D. 1995, in this Court sitting as a Juvenile Court, there was called a hearing for consideration of the matters in the above styled and numbered cause, wherein by proper petition the said **RUSSELL DON JOHNSON** is alleged to have engaged in delinquent conduct.

And after due notice had been served on all parties for the time required by law, came and appeared the petitioner by its County Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person, with his attorney Mike Smiddy appointed also being present, and with his parents Kathy Johnson also being present; and the child and his attorney having waived the ten (10) days for preparation for such hearing, and the right to a trial by jury, in writing; and all parties announced ready for such hearing; and thereupon the Court after hearing the pleadings of all the parties and after hearing the evidence and argument of counsel, finds beyond a reasonable doubt that the following allegations in the petition filed herein are true and supported by the evidence:

The said child engaged in delinquent conduct, to-wit: That on or about the 17th day of August, A.D. 1995, the said child violated a penal law of this State punishable by imprisonment/confinement in jail, to-wit: Article 22.02 of the Texas Penal Code in that he did then and there in the County of Palo Pinto and State of Texas, intentionally, knowingly and recklessly cause serious bodily injury to Raymond Vargas by then and there stabbing him with a pair of scissors on the wrist and upper left arm.

The Court also finds that said child was born on the 29th day of September , A.D. 1980.

IT IS THEREFORE CONSIDERED AND ADJUDGED BY THE COURT THAT **RUSSELL DON JOHNSON** has engaged in delinquent conduct within the meaning of Section 51.03 of the Texas Family Code.

STATE'S  
EXHIBIT  
#14



True and correct  
copy of original  
filed in the Palo Pinto  
County Clerks Office

Bobbie Smith

12-71-98

Dispositional hearing for this case is set for the 30th day of August, 1995, at 12:05 o'clock P.M. in the County Courtroom of Palo Pinto County, Texas.

SIGNED AND ENTERED on this the 30th day of August, A.D.  
→ 1995.

*Harold M. Smith*  
Judge of the County Court  
Palo Pinto County, Texas  
Sitting as a Juvenile  
Court in Said County

FELONY OFFENSE ONLY

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True and correct  
copy of original  
filed in the Palo Pinto  
County Clerks Office

*Bobbie Smith* 12-11-98

I, the undersigned child,  
have read, understand and  
received a copy of the  
above styled and numbered  
Judgment.

*Russell Johnson*  
Signature of Child

Date: 8-30-95

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parents, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, ~~or his attorney~~, or his guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

FILED

At 11:55 O'Clock A. M.

AUG 30 1995

*Bobbie Smith*  
Clerk of the County Court  
Palo Pinto County, Texas

By \_\_\_\_\_ Deputy

ORDER OF COMMITMENT

CAUSE NO. 444

STATE OF TEXAS

IN THE COUNTY COURT  
OF PALO PINTO COUNTY  
SITTING AS A JUVENILE COURT

→ COUNTY OF PALO PINTO

IN THE MATTER OF RUSSELL DON JOHNSON

ON THIS the 30th day of August A.D. 1995, came on to be heard for disposition the above numbered and entitled cause. The above-named child was adjudged to have engaged in delinquent conduct in a hearing held by this Court on the 30th day of August A.D. 1995.

And after due notice had been served on all parties as required by law, came and appeared the Petitioner by its County Attorney and announced ready for such hearing. And thereupon also came the child, who appeared in person with his attorney Mike Smiddy (appointed) also being present, and with his parents Kathy Johnson also being present; and all parties announced ready for such hearing; and thereupon the Court, after hearing the pleadings of all parties and after hearing the evidence and argument of counsel, finds that the child is in need of rehabilitation and that the protection of the public requires that disposition be made. The Court also finds that the said child was, at the time of this hearing, 14 years of age, having been born on the 29th day of September A.D. 1980.

It further appears to the Court that the best interest of the child and the best interest of society will be served by committing him to the care, custody and control of the Texas Youth Commission for the following reasons:

The said child engaged in delinquent conduct, to-wit: That on or about the 17th day of August, A.D. 1995, the said child violated a penal law of this State punishable by imprisonment/confinement in jail, to-wit: Article 22.02 of the Texas Penal Code in that he did then and there in the County of Palo Pinto and State of Texas, intentionally, knowingly and recklessly cause serious bodily injury to Raymond Vargas by then and there stabbing him with a pair of scissors on the wrist and upper left arm.



True and correct  
copy of original  
filed in the Palo Pinto  
County Clerks Office

12-11-98

*Bobbie Smith*

STATE'S  
EXHIBIT  
#15

The Court finds that all reasonable efforts were made to prevent or eliminate the need for the child's removal from the home and to make it possible to return to his home.

IT IS THEREFORE CONSIDERED AND ADJUDGED BY THE COURT THAT THE said **RUSSELL DON JOHNSON** be and is hereby committed to the care, custody and control of the Texas Youth Commission in accordance with Article 5143d, Vernon's Annotated Texas Civil Statutes for an indeterminate period of time not to exceed the time when he shall be Twenty One (21) years of age or until duly discharged in compliance with the provisions of Article 5143d, Vernon's Annotated Texas Civil Statutes. The child is ordered placed in custody of the Sheriff of Palo Pinto County and the Juvenile Probation Officer pending transportation to the proper Texas Youth Commission facility.

The Clerk of this Court will furnish the child a copy of this Order.

SIGNED AND ENTERED ON THIS the 30th day of August A.D. 1995.

Harold M. Couch  
Harold M. Couch  
Judge of the County Court  
Of Palo Pinto County, Texas  
Sitting as a Juvenile Court  
In Said County

On entry of the above and foregoing order, the Court instructed the attorney for the child to advise the child and his parents, guardian, or guardian ad litem of the child's right to appeal, of the child's right to representation by counsel on appeal, and of the child's right to the appointment of an attorney for appeal if an attorney cannot be obtained because of indigency. The attorney was instructed that if the child, and his parent, guardian, or guardian ad litem express a desire to appeal, the attorney shall file a notice of appeal with this Court and inform this Court whether or not he will handle the appeal.

RECORDED AND INDEXED TO BOUND VOL. 1995

Harold M. Couch  
Juvenile Court Judge

FILED

CLERK OF THE COUNTY COURT

AUGUST 20 O'Clock A.M.

AUG 30 1995

Babie Smith  
Clerk of the County Court  
Palo Pinto County, Texas

By Deputy

True and correct  
copy of original  
filed in the Palo Pinto  
County Clerks Office



Babie Smith

12-11-98

NO. 10,690

THE STATE OF TEXAS \* IN THE DISTRICT COURT OF  
VS. \* PALO PINTO COUNTY, TEXAS  
RUSSELL DON JOHNSON \* 29TH JUDICIAL DISTRICT

JUDGMENT ON JURY VERDICT OF GUILTY  
PUNISHMENT FIXED BY COURT OR JURY - PROBATION GRANTED

JUDGE PRESIDING: Honorable David Cleveland

DATE OF JUDGMENT: April 15, 1997

ATTORNEY FOR STATE: Jerry D. Ray, District Attorney; Brenda Vickers, Assistant District Attorney;

ATTORNEY FOR DEFENDANT: Mike A. Smiddy, appointed

OFFENSE CONVICTED OF: Aggravated Assault with a Deadly Weapon, an offense defined in Art. 42.12, Sec. 3g(a)(2), Texas Code of Criminal Procedure

DEGREE: Second

DATE OFFENSE COMMITTED: December 5, 1996

CHARGING INSTRUMENT: Indictment

PLEA: Not Guilty

JURY VERDICT: Guilty

PRESIDING JUROR: Gary Arthur Lindley

PLEA TO ENHANCEMENT PARAGRAPH: N/A

JURY VERDICT ON ENHANCEMENT PARAGRAPH(S): N/A

FINDINGS ON USE OF DEADLY WEAPON: Affirmative, (as alleged in the indictment, to-wit: a knife which in the manner of its use and intended use is capable of causing death or serious bodily injury).

PUNISHMENT ASSESSED BY: Jury

DATE SENTENCE IMPOSED: April 15, 1997

COSTS: \$146.50 court costs; \$1,200.00 atty fee; \$10,000.00 fine;  
\$3,483.00 restitution

PUNISHMENT AND PLACE OF CONFINEMENT: Ten (10) years I.D.T.D.C.J.  
suspended

DATE TO COMMENCE: April 15, 1997

TIME CREDITED: N/A

FILED

APR 17 1997  
Helen Slemmons  
DIST. COURT, PALO PINTO CO., TEXAS  
AT 4:00 PM-AM

A CERTIFIED COPY  
ATTEST: /2-15 APR 1998  
Helen Slemmons  
District Clerk, Palo Pinto  
County, Texas  
Helen Slemmons  
 Clerk Deputy

TOTAL AMOUNT OF RESTITUTION/REPARATION: \$14,829.50

RESTITUTION TO BE PAID TO: Palo Pinto General Hospital, Mineral Wells, Texas  
Concurrent Unless Otherwise Specified:

On the 14th day of April , 1997, this cause was called for trial, and the State appeared by the above named attorney, and the Defendant appeared in person in open Court, the above named counsel for Defendant also being present, and the said Defendant having theretofore been duly arraigned, and it appearing to the court that Defendant is mentally competent to stand trial, both parties announced ready for trial and thereupon a jury, to-wit: the above named presiding juror and eleven others were duly selected, impaneled and sworn, and the Indictment was read before the jury and the Defendant's plea thereto was entered as shown above, and the evidence having been submitted, and the jury having been duly charged by the Court, retired in charge of the proper officer to consider the verdict, and afterward were brought into open Court, the Defendant and Defendant's counsel being present, and returned into open Court the verdict set forth above, which was received by the Court and is herenow entered upon the minutes of the court as shown above.

Thereupon, the Defendant elected to have punishment assessed by the jury and the jury was called back and heard evidence relative to the question of punishment and having been duly charged by the Court, they retired to consider such question, and after having deliberated they returned into court the verdict shown under punishment above.

IT IS THEREFORE ORDERED AND ADJUDGED by the Court, and it is the judgment of the Court, that the Defendant is guilty of the offense as alleged in the indictment, and that the Defendant be punished by confinement in the Institutional Division of the Texas Department of Criminal Justice for the term of ten (10) years, and by a fine as shown above, that the State of Texas do have and recover of said Defendant costs as shown above for which execution may issue; but that imposition of confinement is suspended and Defendant is placed on community supervision for the period shown above from date hereof, upon the following terms and conditions, that during said term of community supervision he shall:

- (a) Neither commit nor be convicted of any offense against the laws of this State or any other State or the United States;
- (b) Avoid injurious or vicious habits;
- (c) Avoid persons or places of disreputable or harmful character;
- (d) Report to the Community Supervision Officer of Palo Pinto County, Texas, twice each month, within the first five days of each month and between the 15th and 20th of each month during said term of community supervision, beginning upon release from the substance abuse treatment facility and at such other times as directed by the Court or Community Supervision Officer;
- (e) Permit the Community Supervision Officer to visit him at home or elsewhere;
- (f) Work faithfully at suitable employment as far as possible;
- (g) Remain within Palo Pinto County, Texas, during said term of community supervision unless given permission in writing by the Court or Community Supervision Officer to leave said county (except

absences not to exceed 48 hours shall be allowed without securing permission);

- (h) Support the dependents you now have or acquire during said term.
- (i) Advise the Community Supervision Officer of any change of address or employment within 5 days after such change;
- (j) Refrain use, possession or consumption of marijuana or any other controlled substances, or alcohol;
- (k) Submit to periodic testing for use or consumption of marijuana or any controlled substance, and pay for such testing;
- (l) Work faithfully at a Community Service task for 600 hours under the direction of the Community Supervision Department, said work shall begin and shall be completed by a date determined by the Court upon release from the substance abuse treatment facility.
- (m) Pay to and through the Community Supervision Office of Palo Pinto County, Texas, the following:

1.	\$ 146.50	Court Costs
2.	\$ 3,483.00	Restitution - to Palo Pinto General Hospital
3.	\$10,000.00	Fine
4.	\$ 1,200.00	Attorney Fee
5.	\$ N/A	Other -

Making a total sum of \$14,829.50, and said total sum shall be paid as follows, to the Community Supervision Office of Palo Pinto County, Texas, to-wit:

Amount per month to be determined by the Court and beginning on a date to be determined by the Court upon release from the substance abuse treatment facility.

Each monthly payment shall be credited and applied in the following manner, (1) to Restitution, until fully paid, and then (2) to Court Costs, until fully paid, and then (3) to the Fine, until fully paid, and then (4) Attorney Fees, until fully paid, and then (5) to Other, if any, until fully paid.

THE ABOVE TERMS OF PROBATION MAY BE ALTERED, INCREASED OR DECREASED AT ANY TIME BY THE DISTRICT COURT, in accordance with Art. 42.12 of the Texas Code of Criminal Procedure.

6. In addition to the above, Community Supervision fees in the amount of \$25.00 per month during the period of community supervision, beginning date to be determined by the Court upon release from the substance abuse treatment facility.

7. \$20.00 to the Palo Pinto County Crime Stoppers Program payable on or before determination by the Court upon release from the substance abuse treatment facility.

(n) Remain in custody of the Palo Pinto County Sheriff's Department until such time as you are transported to the substance abuse felony punishment facility as hereinafter provided.

(o) Remain in the substance abuse felony punishment facility established in Sec. 493.009, Government Code, and operated by the Community Justice Assistance Division of the Texas Department of Criminal Justice for not less than 90 days nor more than one (1)

year, The defendant shall comply with all rules, regulations and treatment programs and remain in such facility until discharged by the Court.

(p) Attend and successfully complete the Palo Pinto County Drug Offender Education program and pay the required fee to sponsoring agent. Such attendance to begin at a date to be determined by the Court upon release from the substance abuse treatment facility.

(q) Attend, participate and successfully complete H.O.P.E. Plan of Action and Continuum of Care. Enrollment shall be on or before determination by the Court after release from the substance abuse treatment facility and remain enrolled in said program during the period of supervision unless released by the Court.

SIGNED AND ORDERED this 16th day of April, 1997.

Right Left Thumb print of Defendant:



Dave Cleland  
DISTRICT JUDGE  
29th Judicial District

\*\*\*\*\*

I, Russell Don Johnson, defendant in the above cause hereby acknowledge that I understand the conditions of my community supervision, and further understand that the Court may at any time, during the period of community supervision, alter or modify these conditions, and that the Court has authority to revoke my community supervision for violation of any of the above conditions, further, that a copy of the above order setting out the terms and conditions of my community supervision was delivered to me on the 17 day of APRIL, 1997.

Russell Johnson  
Defendant

ATTEST:

Jean Stevens  
DISTRICT CLERK  
PALO PINTO COUNTY, TEXAS

BY \_\_\_\_\_, Deputy

NO. 10690

STATE OF TEXAS

\*

IN THE 29TH JUDICIAL

VS.

\*

DISTRICT COURT OF

RUSSELL DON JOHNSON

\*

PALO PINTO COUNTY, TEXAS

AMENDMENT TO COMMUNITY SUPERVISION

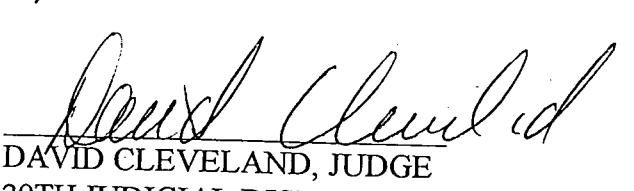
Whereas on the 15th day of April, 1997, Russell Don Johnson was placed on community supervision in the above cause for a term of Ten (10) years, and

Whereas on he 15th day of April, 1997, the Court is of the opinion and finds that conditions "R", "S", "T", "U" & "V" of said supervision should be amended, and is amended to read, as follows:

- "R" You shall be in your house each night at 9:00 p.m. and not leave until 7:00 a.m. each morning during the term of community supervision.
- "S" Legitimize your child within Ninety (90) days after being released from the Substance Abuse Punishment Facility.
- "T" Do not possess a knife with blade longer than 2 inches and do not possess a firearm during the term of community supervision..
- "U" Obtain a High School diploma or a GED during the term of community supervision.
- "V" Abstain from sex outside of marriage during the term of community supervision.

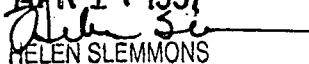
All other terms and conditions of said community supervision order shall remain in full force and effect.

Signed and ordered, entered this the 12 day of April 1997.

  
DAVID CLEVELAND, JUDGE  
29TH JUDICIAL DISTRICT  
PALO PINTO COUNTY, TEXAS

**FILED**

APR 17 1997

  
HELEN SLEMMONS

DIST. COURT, PALO PINTO CO., TEXAS

AT 3:30 PM-AM

17 A copy of the above order received and read by the undersigned defendant on this the day of APRIL, 1997.

Russell Johnson  
DEFENDANT

ATTEST:

Denny Ford  
SUPERVISION OFFICER  
29TH JUDICIAL DISTRICT  
PALO PINTO COUNTY, TEXAS

CAUSE NO. 10690

THE STATE OF TEXAS

VS.

RUSSELL DON JOHNSON

\*  
\*  
\*  
\*  
\*

IN THE DISTRICT COURT

29TH JUDICIAL DISTRICT

PALO PINTO COUNTY, TEXAS

**SPECIAL CONDITION OF COMMUNITY SUPERVISION**

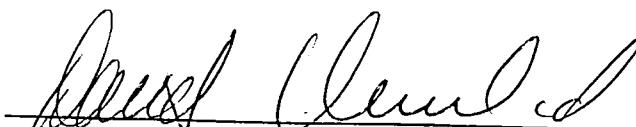
Pursuant to Art. 42.12 C.C.P., Section 14, the Court finds: (1) this defendant has been placed on community supervision under this Article; (2) the defendant is charged with or convicted of a felony other than a felony or criminal attempt of a felony under Sec. 21.11, 22.011, or 22.021 of the Penal Code; and (3) the Court affirmatively finds that (a) drugs or alcohol abuse significantly contributed to the commission of the crime or violation of community supervision; and (b) the defendant is a suitable candidate for treatment, as determined by the suitability criteria established by the Texas Board of Criminal Justice under Section 493.009(b) of the Government Code.

As a condition of community supervision, the defendant is required to serve a term of confinement and treatment in a substance abuse treatment facility under this section, abiding by all rules and regulations of said program for a term of not less than 90 days or more than 1 year. Upon release, the defendant is required to participate in a drug or alcohol abuse continuum of care treatment plan as developed by the Texas Commission on Alcohol and Drug Abuse, abiding by all rules and regulations of said treatment plan until discharged by the staff of the continuum of care program.

SIGNED this 16th day of April, 1997.

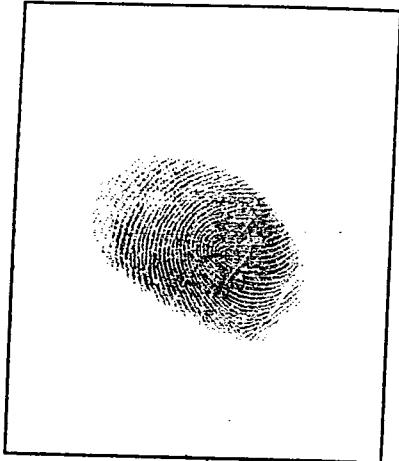
**FILED**

APR 17 1997  
Helen Slemmons  
HELEN SLEMMONS  
DIST. COURT, PALO PINTO CO., TEXAS  
AT 3:30 PM-AM

  
JUDGE PRESIDING

In the 29th Judicial District Court of  
Palo Pinto County, Texas

I acknowledge receipt of a copy of the SPECIAL CONDITION OF COMMUNITY SUPERVISION and fully understand same.



RIGHT THUMB

Russell Johnson

Adult Probationer

A copy of this Order was delivered to the above named probationer by a Deputy District Clerk on this the 17 day of APRIL, 1999.

DIRECTOR, \_\_\_\_\_

Community Supervision and Corrections Department

BY:

Jenny Ford  
Supervision Officer

NO. 10690

THE STATE OF TEXAS

\*

IN THE 29TH JUDICIAL

VS.

\*

DISTRICT COURT OF

RUSSELL DON JOHNSON

\*

PALO PINTO COUNTY, TEXAS

JUDGMENT REVOKING COMMUNITY SUPERVISION

Judge Presiding: Honorable David Cleveland

Date of Judgment: September 11, 1998

Attorney for State: Jerry Ray

Attorney for Defendant: Mike Smiddy

Offense Convicted of: Aggravated Assault with a Deadly Weapon

Plea: True

Degree: Second

Date Offense Committed: December 5, 1996

FILED

SEP 14 1998

*Helen Slemmons*  
HELEN SLEMMONS  
DIST. COURT, PALO PINTO CO., TEXAS  
AT 9:10 PM-AM

Paragraph Violated and Grounds for Revocation:

"2" That the said Russell Don Johnson, on or about the 17th day of June, 1998, did consume a controlled substance, to-wit: Marijuana.

As set out in State's Original Petition to Revoke Community Supervision.

Original Punishment Assessed: Ten (10) years in the Institutional Division of the Texas Department of Criminal Justice

Findings of Use of Deadly Weapon: Affirmative, (as alleged in the indictment, to-wit: a knife which in the manner of its use and intended use is capable of causing death or serious bodily injury).

CERTIFIED COPY  
ATTEST: 10-15-1998  
Helen Slemmons  
District Clerk, Palo Pinto  
County, Texas  
By *Helen Slemmons*  
Deputy Clerk

Punishment Imposed and Place of Confinement: Ten (10) years in the Institutional Division of the Texas Department of Criminal Justice

Date of Sentence: September 11, 1998

Costs: \$146.50 Court costs; \$3,483.00 Restitution; \$10,000.00 Fine; \$1,200.00 Attorney fee; \$350.00 Attorney fee for MTR.

Time Credited: January 2, 1997 to April 15, 1997; August 3, 1998 to September 11, 1998.

TOTAL JAIL CREDIT: 144 days

Total amount of Restitution/Reparation: \$15,179.50

Concurrent Unless Otherwise Specified:

Restitution to be paid to: Palo Pinto General Hospital, Mineral Wells, Texas

On this the 11th day of September, 1998, the Original Motion of the State to Revoke Community Supervision in this cause (filed on the 31st day of July, 1998) came on for hearing; and came the State of Texas, by its above named attorney, and the Defendant appeared in person and by the above named attorney for Defendant, and announced ready for hearing, the Defendant having been heretofore served with a copy of said Motion to Revoke Community Supervision having been read in open Court in the presence of the Defendant and his attorney, and the Defendant having entered a plea thereto as set out above, and the Court after considering the pleading's and hearing the evidence offered by both the State and Defendant and the arguments of counsel, is of the opinion and finds that since the time Defendant was placed on Community Supervision herein and within the terms and conditions of such Community Supervision as set out above, and the Court finds from a preponderance of the evidence that the grounds for revocation of Community Supervision set out above are true, and the Court finds that Community Supervision herein should be revoked.

Therefore the Defendant is hereby, adjudged to have violated the terms and conditions of Community Supervision in this cause in the manner set forth above, and the Order Suspending the Imposition of Sentence, and Placing Defendant on Community Supervision heretofore entered in this cause should be, and the same is hereby, REVOKED, and it is hereby ORDERED by the Court that the Defendant be now sentenced herein, in accordance with the Judgment heretofore in this cause and in compliance with this order.

IT IS, THEREFORE ORDERED BY THE COURT, in the presence of said Defendant and his attorney, that the Judgment and Order of the Court Revoking Community Supervision entered herein be in all things approved confirmed and the Defendant, who has been adjudged guilty in the Judgment heretofore entered, is sentenced to a term of Ten (10) years in the Institutional Division of the Texas Department of Criminal Justice, and Defendant shall be

delivered by the Sheriff of this county to the Director of the Institutional Division of the Texas Department of Criminal Justice, or other person legally authorized to received such convicts, to serve the punishment assessed in said judgment and this sentence, and the said Defendant shall be confined for the above named terms in accordance with the provisions of the laws governing such punishment and according to the rules and regulations of the Institutional Division of the Texas Department of Criminal Justice.

And the Defendant is remanded to jail until said Sheriff can obey the directions of said judgment, this order and sentence.

David Cleveland  
DAVID CLEVELAND, JUDGE  
September 14, 1998  
DATE SIGNED

DATE OF APPEAL



Fingerprint from  
Right thumb  
finger of Defendant

CAUSE NO. 37,295

IN THE INTEREST OF  
ANTONIO MIGUEIL REYES,  
A CHILD

IN THE DISTRICT COURT  
PALO PINTO COUNTY, TEXAS  
29TH JUDICIAL DISTRICT

ORDER OF PARENTAGE

On September 2, 1998, the Court heard this case.

IREZ CHAVEZ REYES, Petitioner, appeared in person and through attorney of record, MIKE A. SMIDDY, and announced ready for trial.

RUSSELL DON JOHNSON, the biological father of the child, waived issuance and service of citation by waiver duly filed and appeared in person.

The Court, after examining the record and hearing the evidence and argument of counsel, finds that it has jurisdiction of this case and of all the parties and that no other court has continuing, exclusive jurisdiction of this case. All persons entitled to citation were properly cited.

A jury was waived, and all questions of fact and of law were submitted to the Court.

The record of testimony was duly reported by Kim Brooks, Official Court Reporter for the 29th Judicial District.

The Court finds that the following child is the subject of this suit:

NAME: ANTONIO MIGUEIL REYES  
BIRTHPLACE: Mineral Wells, TX  
PRESENT RESIDENCE: With Petitioner  
HOME STATE: Texas

SEX: Male  
BIRTHDATE: November 16, 1995  
SSN:

**FILED**

SEP 2 - 1998  
*Helen Slemmons*  
HELEN SLEMMONS  
DIST. COURT, PALO PINTO CO., TEXAS  
AT 9:25 P.M.-A.M.  
*By L. Hunsinger, Deputy*



The Court finds that RUSSELL DON JOHNSON has executed a statement of paternity for the child the subject of this suit in form and substance as provided by law, that a copy of the statement has been filed in this case, and that the facts recited in the statement are true.

The Court, after considering the pleadings, the evidence, the argument of counsel, and the circumstances of the parties and of the child, finds that the following orders are in the best interest of the child and are proper.

IT IS ORDERED that ANTONIO MIGUEIL REYES, a child born to IREZ CHAVEZ REYES at Mineral Wells, Palo Pinto County, Texas on November 16, 1995, is adjudicated the child of RUSSELL DON JOHNSON and that RUSSELL DON JOHNSON is adjudicated a parent of that child and that the parent-child relationship exists between the father and the child for all purposes.

IT IS ORDERED that the child formerly known as ANTONIO MIGUEIL REYES shall hereafter be named ANTONIO MIGUEIL JOHNSON.

The Court finds that the following orders are in the best interest of the child.

IT IS ORDERED that IREZ CHAVEZ REYES is appointed a parent sole managing conservator and RUSSELL DON JOHNSON is appointed a parent possessory conservator of the following child: ANTONIO MIGUEIL JOHNSON.

IT IS ORDERED that, at all times, IREZ CHAVEZ REYES, as a parent sole managing conservator, and RUSSELL DON JOHNSON as a parent possessory conservator, shall each have the following rights and duty:

1. the right to receive information from the other parent concerning the health, education, and welfare of the child;

2. the duty to inform the other parent in a timely manner of significant information concerning the health, education, and welfare of the child;
3. the right to confer with the other parent to the extent possible before making a decision concerning the health, education, and welfare of the child;
4. the right of access to medical, dental, psychological, and educational records of the child;
5. the right to consult with a physician, dentist, or psychologist of the child;
6. the right to consult with school officials concerning the child's welfare and educational status, including school activities;
7. the right to attend school activities;
8. the right to be designated on the child's records as a person to be notified in case of an emergency;
9. the right to consent to medical, dental, and surgical treatment during an emergency involving an immediate danger to the health and safety of the child; and
10. the right to manage the estate of the child to the extent the estates have been created by the parent or the parent's family.

IT IS ORDERED that, during their respective periods of possession, IREZ CHAVEZ REYES, as a parent sole managing conservator, and RUSSELL DON JOHNSON as a parent possessory conservator, shall each have the following rights and duties:

1. the duty of care, control, protection, and reasonable discipline of the child;
2. the duty to support the child, including providing the child with clothing, food, shelter, and medical and dental care not involving an invasive procedure;
3. the right to consent for the child to medical and dental care not involving an invasive procedure;
4. the right to consent for the child to medical, dental, and surgical treatment during an emergency involving immediate danger to the health and safety of the child; and
5. the right to direct the moral and religious training of the child.

IT IS ORDERED that IREZ CHAVEZ REYES, as parent sole managing conservator, shall have the following exclusive rights and duty:

1. the right to establish the primary residence of the child;
2. the right to consent to medical, dental, and surgical treatment involving invasive procedures and to consent to psychiatric and psychological treatment of the child;
3. the right to receive and give receipt for periodic payments for the support of the child and to hold or disburse these funds for the benefit of the child;
4. the right to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
5. the right to consent to marriage and to enlistment in the armed forces of the United States;
6. the right to make decisions concerning the child's education;
7. the right to the services and earnings of the child;
8. except when a guardian of the child's estate or a guardian or attorney ad litem has been appointed for the child, the right to act as an agent of the child in relation to the child's estate if the child's action is required by a state, the United States, or a foreign government; and
9. the duty to manage the estate of the child to the extent the estates have been created by community property or the joint property of the parents.

The Court finds that the application of the guidelines as set out in the Standard Possession Order of the Texas Family Code § 153.311 and following would be unworkable and inappropriate under the circumstances.

The following orders as to access and possession for the Possessory Conservator are found to be in the best interest of the child. More specific orders are found not to be in the best interest of the child.

Possessory Conservator shall have access to the child at reasonable times and places under

the supervision of the sole Managing Conservator or someone designated to supervise visits by the sole Managing Conservator.

IT IS ORDERED that before any party files suit for modification of the terms and conditions of conservatorship, possession, or support of the child, except in an emergency, that party shall attempt to mediate in good faith the controversy as provided in chapter 153 of the Texas Family Code.

IT IS ORDERED that Respondent, RUSSELL DON JOHNSON pay to Petitioner, IREZ CHAVEZ REYES, for the support of ANTONIO MIGUEIL JOHNSON an amount that is reasonable.

IT IS ORDERED that all payments shall be made through the Registry of the 29th Judicial District Court, Palo Pinto County, P. O. Box 189, Palo Pinto, Texas 76484, and then remitted by that agency to IREZ CHAVEZ REYES for the support of the child.

The information required for each party by section 105.006(a) of the Texas Family Code is as follows:

Name: IREZ CHAVEZ REYES (mother)

Social Security Number: 462-53-8467

Driver's License Number and issuing state: TX

Current Residence Address: 4119 FM 1195, Mineral Wells, TX 76067

Mailing Address: Same.

Home Telephone Number: (940) 325-5338

Name of Employer: Diamond Supermarket

Address of Employer: 100 S.E. 27th Ave, Mineral Wells, TX

Work Telephone Number: (940) 325-9549



Name: RUSSELL DON JOHNSON (father)  
Social Security Number: 462-61-2422  
Driver's License Number and issuing state: none.  
Current Residence Address: c/o Palo Pinto County Jail, Palo Pinto, TX 76484  
Mailing Address: c/o P. O. Box 506, Palo Pinto, TX 76484.  
Home Telephone Number: None  
Name of Employer: None  
Address of Employer: None  
Work Telephone Number: None

Name: ANTONIO MIGUEIL JOHNSON (child)  
Social Security Number: \_\_\_\_\_  
Driver's License Number and issuing state: none.  
Current Residence Address: 4119 FM 1195, Mineral Wells, TX 76067  
Mailing Address: Same.  
Home Telephone Number: (940) 325-5338  
Name of Employer: None  
Address of Employer: None  
Work Telephone Number: None

EACH PERSON WHO IS A PARTY TO THIS ORDER IS ORDERED TO NOTIFY EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY OF ANY CHANGE IN THE PARTY'S CURRENT RESIDENCE ADDRESS, MAILING ADDRESS, HOME TELEPHONE NUMBER, NAME OF EMPLOYER, ADDRESS OF EMPLOYMENT, DRIVER'S LICENSE NUMBER, AND WORK TELEPHONE NUMBER. THE PARTY IS ORDERED TO GIVE NOTICE OF AN INTENDED CHANGE IN ANY OF THE REQUIRED INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE

REGISTRY ON OR BEFORE THE 60TH DAY BEFORE THE INTENDED CHANGE. IF THE PARTY DOES NOT KNOW OR COULD NOT HAVE KNOWN OF THE CHANGE IN SUFFICIENT TIME TO PROVIDE 60-DAY NOTICE, THE PARTY IS ORDERED TO GIVE NOTICE OF THE CHANGE ON OR BEFORE THE FIFTH DAY AFTER THE DATE THAT THE PARTY KNOWS OF THE CHANGE.

THE DUTY TO FURNISH THIS INFORMATION TO EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY CONTINUES AS LONG AS ANY PERSON, BY VIRTUE OF THIS ORDER, IS UNDER AN OBLIGATION TO PAY CHILD SUPPORT OR ENTITLED TO POSSESSION OF OR ACCESS TO A CHILD.

FAILURE BY A PARTY TO OBEY THE ORDER OF THIS COURT TO PROVIDE EACH OTHER PARTY, THE COURT, AND THE STATE CASE REGISTRY WITH THE CHANGE IS THE REQUIRED INFORMATION MAY RESULT IN FURTHER LITIGATION TO ENFORCE THE ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR SIX MONTHS, A FINE OF UP TO \$ 500.00 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.

Notice shall be given to the other party by delivering a copy of the notice to the party by registered or certified mail, return receipt requested. Notice shall be given to the Court by delivering a copy of the notice either in person to the Clerk of this Court or by registered or certified mail addressed to the clerk. Notice to the state case registry shall be given according to procedures for notification published by the title IV-D agency under section 105.006(g) and chapter 234 of the Texas Family Code.

**Warnings to Parties**

**FAILURE TO OBEY A COURT ORDER FOR CHILD SUPPORT OR FOR POSSESSION OF OR ACCESS TO A CHILD MAY RESULT IN FURTHER LITIGATION TO ENFORCE THIS ORDER, INCLUDING CONTEMPT OF COURT. A FINDING OF CONTEMPT MAY BE PUNISHED BY CONFINEMENT IN JAIL FOR UP TO SIX MONTHS, A FINE OF UP TO \$500 FOR EACH VIOLATION, AND A MONEY JUDGMENT FOR PAYMENT OF ATTORNEY'S FEES AND COURT COSTS.**

**FAILURE OF A PARTY TO MAKE A CHILD SUPPORT PAYMENT TO THE PLACE AND IN THE MANNER REQUIRED BY A COURT ORDER MAY RESULT IN THE PARTY'S NOT RECEIVING CREDIT FOR MAKING THE PAYMENT.**

**FAILURE OF A PARTY TO PAY CHILD SUPPORT DOES NOT JUSTIFY DENYING THAT PARTY COURT-ORDERED POSSESSION OF OR ACCESS TO A CHILD. REFUSAL BY A PARTY TO ALLOW POSSESSION OF OR ACCESS TO A CHILD DOES NOT JUSTIFY FAILURE TO PAY COURT-ORDERED CHILD SUPPORT TO THAT PARTY.**

IT IS ORDERED that costs of court are to be borne by the party who incurred them.

IT IS ORDERED that all relief requested in this case and not expressly granted is denied.

SIGNED on September 2, 1998.

  
DAVID CLEVELAND, Judge Presiding